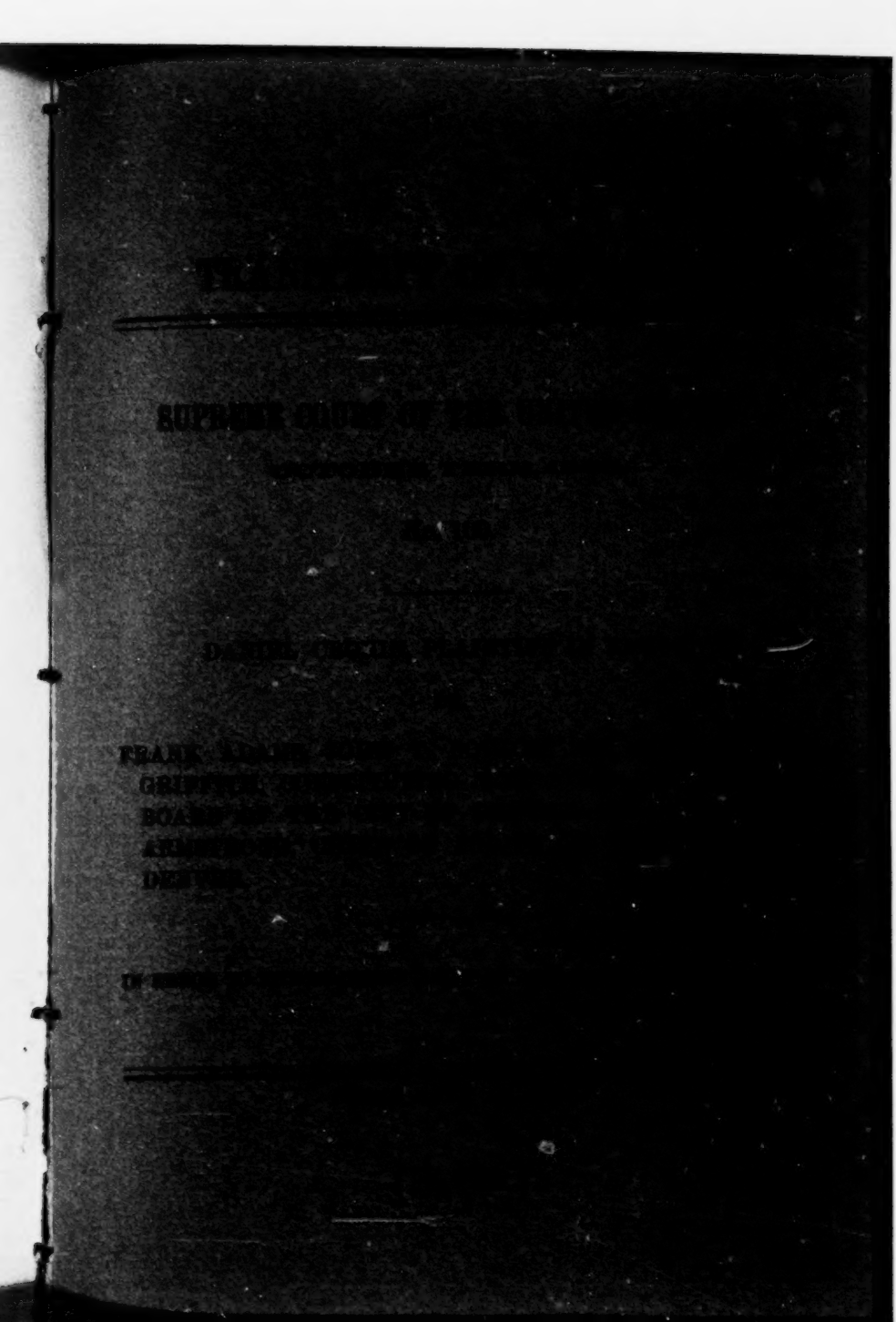

(18,624.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 100.

DANIEL CRONIN, PLAINTIFF IN ERROR,

vs.

FRANK ADAMS, JOHN T. BOTTOM, AND WILLIAM H. GRIFFITH, CONSTITUTING THE FIRE AND POLICE BOARD OF THE CITY OF DENVER, AND HAMILTON ARMSTRONG, CHIEF OF POLICE OF THE CITY OF DENVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Colorado, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Daniel Cronin, plaintiff in error, and Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was
2 against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Daniel Cronin, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty fourth day of June, in the year of our Lord one thousand nine hundred and two.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY,
Clerk U. S. Circuit Court, District of Colorado,
By CHARLES W. BISHOP,
Deputy Clerk.

Allowed by—
WILLIAM H. GABBERT,
Presiding Justice of the Supreme Court of the State of Colorado.

1—100

3 [Endorsed:] 4392. Writ of error.

4 *Return on Writ of Error.*

UNITED STATES OF AMERICA,
District of Colorado, State of Colorado, } ss:

In obedience to the command of the above and foregoing writ, I herewith transmit to the honorable the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the above entitled cause, together with all things concerning the same.

Witness my hand and the seal of the supreme court of the State of Colorado, at Denver in said State, this 22" day of July, A. D. 1902.

[Seal Supreme Court, State of Colorado.]

HORACE G. CLARK,
Clerk of the Supreme Court of the State of Colorado,
By JOHN B. COOKE,
Deputy Clerk.

5 UNITED STATES OF AMERICA,
State of Colorado. }

To the Honorable John Campbell, chief justice of the supreme court of the State of Colorado:

The petition of Daniel Cronin respectfully shows, that on the second day of June, A. D., 1902, the supreme court of the State of Colorado rendered a final judgment against your petitioner in a certain cause wherein Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, were appellants, and your petitioner was appellee, reversing a certain judgment rendered in the district court of Arapahoe county, Colorado, enjoining the said appellants from arresting your petitioner for any violation of sections 745 and 746 of the Compiled Ordinances of the city of Denver and from interfering with the conduct of your petitioner's business by reason of any alleged violation of said sections of said ordinance, and said supreme court also rendered judgment against your petitioner dismissing his complaint in said cause and for costs and awarding execution thereon, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court in said State in which a decision in said cause could be had; and your petitioner claims the right to remove such judgment to the Supreme Court of the United States by writ of error under section 709 of the Revised Statutes of the United States, because there was drawn in question in said suit the validity of a statute of and an authority exercised under the State of Colorado on the ground

of their being repugnant to the Constitution of the United
6 States, and the decision of said supreme court was in favor of their validity, and because in said suit your petitioner claimed a right, privilege and immunity under the Constitution of the United States, and the decision of said supreme court was against the right, privilege or immunity claimed by your petitioner in this, that your petitioner sought to restrain said fire and police board of the city of Denver and said chief of police from arresting and prosecuting your petitioner for alleged violation of said sections of said ordinance, and from interfering with the business carried on by your petitioner. That said sections of the ordinances of the city of Denver were enacted under the authority of the legislature of the State of Colorado, and said sections of said ordinances read as follows:

SECTION 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall, by himself or his agent, clerk or servant, permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

SECTION 746. No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place.

7 That upon the trial of said cause and upon the hearing of said cause in said supreme court this petitioner claimed and asserted that the said ordinances and statutes of the State of Colorado authorizing the same were repugnant to that portion of the fourteenth amendment to the Constitution of the United States which reads as follows:

"No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

That the said supreme court in its judgment and decision held that the said sections of said ordinances of the city of Denver were not in conflict with or repugnant to said portion of the fourteenth amendment to the Constitution of the United States, and that the said sections prohibiting women remaining or being in saloons or wine rooms was valid, and the action of the said fire and police board and chief of police in arresting your petitioner for the violation of said sections was authorized by law and did not abridge the privileges and immunities of your petitioner and did not deprive him of his property or deny to him the equal protection of the laws, as appears by the records of the proceedings in said cause, which is herewith submitted.

Wherefore, your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States and for a citation and supersedeas, and your petitioner will ever pray, etc.

DANIEL CRONIN, *Petitioner.*
MILTON SMITH,
Attorney for Petitioner.

6/10/2/2.

8 It is hereby ordered that a writ of error issue as prayed for in the foregoing petition, except that supersedeas is not granted, and the undersigned, presiding justice of the supreme court of the State of Colorado, the chief justice of said supreme court being absent from said State, does hereby certify that upon the hearing of said cause in said supreme court of the State of Colorado the validity of certain sections of the ordinances of the city of Denver and of the statutes of the State of Colorado authorizing such ordinances was drawn in question on the ground of their being repugnant to the Constitution of the United States, and that the decision of said supreme court was in favor of their validity.

Witness my hand this 24th day of June, A. D., 1902.

WILLIAM H. GABBERT,
Presiding Justice of the Supreme Court of the State of Colorado.

9 [Endorsed:] No. 4392 In the supreme court of the State of Colorado Frank Adams *et al.* appellants *vs.* Daniel Cronin appellee Petition for writ of error from U. S. Supreme Ct. Milton Smith, attorneys for petitioner.

10 *Bond.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Know all men by these presents, that we, Daniel Cronin, as principal, and John D. Hanigan and C. A. Lammers, all of the State of Colorado, as sureties, are held and firmly bound unto Frank Adams, John T. Bottom and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, in the full and just sum of one thousand dollars ($1000.00), to which payment well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 27th day of June in the year of our Lord one thousand nine hundred and two.

Whereas, lately, at the April term, A. D. 1902, of the Supreme court of the State of Colorado, sitting at Denver, in a certain action pending in said court between Frank Adams, John T. Bottom and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, appellants, and Daniel Cronin, appellee, judgment was rendered against the said Daniel Cronin, and the said Daniel Cronin having prayed and been allowed a writ of error to the supreme court of the State of Colorado, to reverse the judgment of the said supreme court of the State of Colorado, and a citation directed to the said Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, citing and admonishing
11 them to be and appear in the Supreme Court of the United States, at Washington, D. C., thirty days from and after the date of the said citation:

Now, the condition of the above obligation is such, that if the said Daniel Cronin shall prosecute the said writ of error to effect, and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

DANIEL CRONIN. [SEAL.]
JOHN D. HANIGAN. [SEAL.]
C. A. LAMMERS. [SEAL.]

Sealed and delivered in the presence of
LINCOLN B. LIVINGSTON.
WILLIAM A. HARKINS.

Approved:
JOHN CAMPBELL,
Chief Justice of the Supreme Court of the State of Colorado.

12 STATE OF COLORADO, *County of Arapahoe,* } *ss:*

John D. Hanigan and C. A. Lammers, the sureties, whose names are subscribed to the above undertaking, being severally and duly sworn, each for himself says: That he is a resident within the said Arapahoe county, and that he is worth the sum specified in the said undertaking; one thousand dollars, over and above his just debts and liabilities in property not exempt from execution in this State, particularly, to-wit: as to said J. D. Hanigan lots 29 & 30 block 90 Stiles' addition, No. 2349 to 51 Curtis St., as to said C. A. Lammers lots 37, 38 & N. 6 ft. lot 36 block 5 Pohlfing's subdivision, all in the city of Denver, Arapahoe county.

JOHN D. HANIGAN.
C. A. LAMMERS.

Subscribed and sworn to before me this 27th day of June, A. D. 1902.

My commission expires July 24th 1903

[Seal of Lincoln B. Livingston, Notary Public, Arapahoe County, Colo.]

LINCOLN B. LIVINGSTON,
Notary Public.

13 [Endorsed:] No. — In the Supreme Court of the United States. Daniel Cronin, plaintiff in error, *vs.* Frank Adams *et al.* defendants in error Bond Milton Smith, attorneys for pl'ff in error

14 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire and Police Board of the City of Denver, and HAMILTON ARMSTRONG, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.
} No. 4392. Certificate.

To the honorable the Supreme Court of the United States, and to the honorable the Chief Justice and Associate Justices thereof, Greeting:

This is to certify that, in the above entitled cause, judgment was rendered against the above named appellee on the fifth day of May, A. D., 1902, and thereafter on the second day of June, A. D., 1902, his petition for a rehearing theretofore filed within the time required by the court was denied, and in the hearing and determination of said cause there was drawn in question the validity of a statute of and an authority exercised under the State of Colorado, on the

ground of their being repugnant to the Constitution of the United States, and that said decision was against the appellee and sustained the validity of said statute and authority, and that in said cause said appellee claimed a right, privilege and immunity under the Constitution of the United States, and the decision of said court was against the right, privilege or immunity claimed by said appellee, in this, that in said cause said appellee sought to restrain the appellants from prosecuting the said appellee and from interfering with his business for alleged violation of sections 745 and 746 of the ordinances of the city of Denver enacted under the authority granted by the legislature of the State of Colorado, and that said appellee claimed and asserted that said ordinances and statutes of the State of Colorado authorizing the same were repugnant to the fourteenth amendment to the Constitution of the United States, and that said court in its judgment and decision held that the said sections of said ordinances of the city of Denver were not in conflict with or repugnant to said fourteenth amendment to the Constitution of the United States, and that the judgment of the district court of Arapahoe county, Colorado, entered in said cause in favor of said appellee and restraining said appellants from prosecuting and interfering with the business of said appellee for the alleged violation of said sections of said ordinances of the city of Denver was erroneous, and that said ordinances did not abridge the privileges and immunities of said appellee and did not deprive him of his property or deny to him the equal protection of the laws.

Witness, the Honorable John Campbell chief justice of the supreme court of the State of Colorado, on June 27th in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth, at Denver, in the State of Colorado.

JOHN CAMPBELL,
Chief Justice of the Supreme Court of the State of Colorado

[Endorsed:] No. —. In the supreme court of the State of Colorado. Frank Adams, *et al.*, appellants, *vs.* Daniel Cronin, appellee. Certificate by presiding judge. Milton Smith, attorney for appellee.

In the Supreme Court of the United States.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} Error to the Supreme Court of the State of Colorado.

Assignment of Errors.

Comes now the said Daniel Cronin, plaintiff in error, by Milton Smith, his attorney, and says that the supreme court of the State of Colorado, in case numbered 4389 wherein Daniel Cronin was plain-

tiff in error, and the said The City of Denver was defendant in error, should be reversed and that a judgment should be entered reversing the judgment entered in the county court of Arapahoe county, Colorado, and that in the record and proceedings aforesaid there is manifest error in the following particulars, to-wit:

First. The court erred in affirming the judgement of the county court.

Second. The court erred in deciding that sections 745 and 746 of the compiled ordinances of the city of Denver are valid and not in conflict with the provisions of the constitution of the State of Colorado and of the United States.

Third. The court erred in not deciding that the judgment of the county court of Arapahoe county, Colorado, was contrary to law and denied the right asserted and claimed by the plaintiff in error under the provisions of the Constitution of the United States.

18 Fourth. The court erred in failing and refusing to reverse the judgment of the county court of the county of Arapahoe, and State of Colorado.

Wherefore, this petitioner prays that the judgment aforesaid may be reversed, annulled and altogether holden for naught, and that the judgment of the said county court of Arapahoe county, Colorado, be reversed, annulled and altogether holden for naught.

MILTON SMITH,
Attorney for Plaintiff in Error.

6/26/2/3

19 [Endorsed:] 4392 No. —. In the Supreme Court of the United States Daniel Cronin plaintiff in error *vs.* The City of Denver defendant in error Assignment of errors Milton Smith, attorney for pl'ff in error.

20 UNITED STATES OF AMERICA, *ss:*

To Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Colorado, wherein Daniel Cronin is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John Campbell, chief justice of the supreme court of the State of Colorado, this twenty-seventh day of June, in the year of our Lord one thousand nine hundred and two.

JOHN CAMPBELL,
Chief Justice of Supreme Court, State of Colorado.

21 A copy of the foregoing citation was delivered to me on the 27th day of June, A. D., 1902, and I hereby accept service thereof on behalf of the said Frank Adams, John T. Bottom and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, defendants in error.

H. M. ORAHOOD,
Attorney for Defendants in Error.

22 [Endorsed:] 4392. Citation.

23 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,

vs.

DANIEL CRONIN, Appellee.

To the clerk of the supreme court of the State of Colorado:

In making up the transcript for the Supreme Court of the United States in the above entitled cause you will please make a complete copy of the transcript of record filed in said court from the district court of Arapahoe county, and assignment of errors, together with copies of all orders entered in said supreme court, copy petition for rehearing, copy of the opinion of the court and the final judgment entered. You will also transmit with said certified transcript copies of the printed and typewritten briefs filed by each of the parties to said cause in said supreme court duly certified.

MILTON SMITH,
Attorney for Appellee.

7/14/2/2

24 [Endorsed:] No. 4392. In the supreme court of the State of Colorado. Frank Adams *et al.*, appellants, *vs.* Daniel Cronin, appellee. Milton Smith, attorney for appellee.

25 In the Supreme Court of the State of Colorado.

Pleas before the honorable the supreme court of the State of Colorado, sitting at Denver, in said State, at a term thereof begun and held at the capitol building in said city on the second Monday of April, A. D. 1901, and of the Independence of the United States the one hundred and twenty-fifth.

Present: Hon. William H. Gabbert, Hon. Robert W. Steele, justices, Charles C. Post, Esq., attorney general, Felix A. Richardson, Esq., bailiff, and Horace G. Clark, Esq., clerk.

26 *Be it remembered* that heretofore, and on to-wit, the 30th day of August, A. D. 1901, there *was* filed in the office of said clerk the following transcript of record, and assignment of errors, which are in words and figures as follows, to-wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

District Court, County of Arapahoe, Second Judicial District.

Pleas in the district court of Arapahoe county, State of Colorado, in the first division thereof, before the Hon. P. L. Palmer, one of the judges of the second judicial district of the said State, at a term thereof begun and held at the court house in Denver, in said county, on the second Tuesday (it being the ninth day) of April, A. D. one thousand nine hundred and one.

Present: Hon. P. L. Palmer, one of the judges of the district court Henry A. Lindsley, Esq., district attorney of said district, Robert J. Jones, Esq., sheriff of said county. Otis B. Spencer, Esq., clerk of said court.

27 DANIEL CRONIN
vs.
FRANK ADAMS ET AL., &C. } # 32811.

Be it remembered, that heretofore, and on, to wit, the 24th day of May, A. D., 1901, came the plaintiff, by his attorneys, Messrs. T. J. O'Donnell & Milton Smith, and filed herein his complaint.

Said complaint is in words and figures as follows, to-wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court.

DANIEL CRONIN, Plaintiff,
vs.
FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Defendants. } Complaint.

Now comes the said plaintiff, by T. J. O'Donnell and Milton Smith, his attorneys, and complaining of the said defendants, alleges:

That he is a citizen and resident of the city of Denver, county of Arapahoe and State of Colorado, and has been such for a
28 number of years.

That the city of Denver is a municipal corporation operating under a special charter granted by the legislature of the State of Colorado.

That the defendant, Frank Adams, is fire commissioner of the city of Denver; that the defendant, John T. Bottom, is police commissioner of the city of Denver; that the defendant, William H. Griffith, is excise commissioner of the city of Denver; and that the three constitute the fire & police board of the city of Denver, and the said Hamilton Armstrong is the duly appointed & acting chief of police of said city.

That under and by virtue of said charter provisions the said fire & police board have control of and regulate the issuing of licenses for the carrying on of the liquor business within the limits of said city of Denver, and have power to make arrests for violations of the provisions of the ordinances of the city of Denver in that behalf made and passed.

That the said plaintiff has fitted up at the corner of Eighteenth and Champa streets in said city of Denver and at a number known as 1761 Champa street, a saloon at great expense, which fittings consist of show cases, bar, glassware, tables, chairs, mirrors, ice-boxes, pumps, and other appliances for the conducting of the saloon business, and has stocked the said premises with a large quantity of wines, ales, beers, whiskeys, brandies, and other liquors at great expense, and has at said place been for more than nine years last past carrying on and conducting said business under a license from the said city of Denver.

That the plaintiff has invested a large sum of money in
29 said improvements, fixtures, furniture, wines, ales, whiskeys, brandies and other liquors.

That in the conduct of said business the said plaintiff has been enabled to derive enough profits therefrom to support himself and family.

That said premises are so arranged that in passing from the main bar room one enters a hallway on one side of which are two smaller rooms and on the other side of said hallway is one room, which last mentioned room is used partly for a storage room and partly as a place for serving beverages and drinks; that the other two rooms above mentioned are used for the purpose of serving drinks in to customers and patrons of the said plaintiff's place.

That in the rear of said rooms is another hallway which leads out onto Eighteenth street in the city of Denver.

That all of said premises so described are included in one large room, but which room is partitioned off and divided by partitions extending toward but not reaching the ceiling.

That in the conduct and management of said business it has been the custom and habit of the said plaintiff to serve beer, whisky, and other drinks to women the same as to men, and in so doing the said smaller rooms hereinbefore described have frequently been used for said purpose.

That a portion of said plaintiff's business and the profits derived therefrom have accrued by reason of said sales to women as aforesaid.

That the sales so as aforesaid made were made between the hours

of five o'clock a. m. and twelve o'clock midnight and not afterwards.

30 That plaintiff has at all times maintained an orderly place and not allowed women to become intoxicated upon or in said premises or to enter there when intoxicated.

That it is the desire of said plaintiff to continue so to conduct his business as aforesaid.

That article 15 of ordinance No. 101 of the series of 1898 is entitled, "Liquor saloons, dram shops, and tippling houses," and contains among other provisions sections reading as follows:

SEC. 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall by himself of his agent, clerk or servant permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop, or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

SEC. 746. No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith, in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram-shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house, or liquor saloon, or in any place adjacent thereto, or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person

31 be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place.

That said ordinance No. 101 of the series of 1898 has been published under the authority of the city council of the city of Denver, in a book entitled, "Compiled Ordinances and Charter, the City of Denver, compiled by Henry J. Hersey, of the Denver bar," and printed in the year 1898 by the Smith-Brooks Printing Company, Denver, Colorado.

That said sections 745 and 746 are illegal and void and not authorized by the charter of the city of Denver, and contrary to the provisions of the constitution of the State of Colorado and amendments thereto, and contrary to the provisions of the Constitution of

the United States, and contrary to the laws of the State of Colorado, guaranteeing civil rights to all persons, and contrary to other statutes of the State of Colorado.

That on, to-wit, the 22nd day of May, A. D. 1901, the said Hamilton Armstrong, chief of police of the city of Denver, acting under the directions of the said fire & police board of the city of Denver, caused this plaintiff to be arrested charged with the violation of said sections 745 and 746 of said ordinance No. 101 of the series of 1898, and required plaintiff to appear before the police court of the city of Denver to answer to said charge on the 23rd day of May, 1901, and that on said 23rd day of May, 1901, the police magistrate of said city of Denver found plaintiff guilty of a violation of said ordinance and fined plaintiff the sum of fifty dollars ($50.00) and costs.

That the said fire & police board have instructed the said
32 chief of police and police officers acting under his authority to keep watch of plaintiff's said premises and in case any woman enters plaintiff's said premises so occupied by him as a place for the sale of liquors to arrest this plaintiff, and any and all such women found or being there and said fire & police board and said chief of police threaten and state that they will arrest this plaintiff as often as any woman is found in or upon said premises, and will cause him to be fined a like or greater amount for each of said offenses, and threaten to station police officers at the entrance of plaintiff's said premises and to arrest said plaintiff whenever any woman enters said premises, and that said conduct of said police officers acting under the instructions of said fire & police board and said chief of police has in a large measure destroyed plaintiff's business by deterring both men and women from entering said place on account of said officers being present at or near said place, and if persisted in will absolutely destroy and render valueless the said business and property of the said plaintiff.

That if plaintiff is arrested from time to time for alleged violations of said ordinance as said fire & police board and chief of police have threatened they will cause to be done plaintiff will be unable to pay the fines which will be assessed against him, and plaintiff believes that in default of payment of such fines he will be imprisoned in the jail of said city of Denver and deprived of the opportunity of carrying on his business and thereby his business will be absolutely destroyed, and plaintiff will also be deprived of his liberty contrary to the law of the land and without due process of law.

33 That this case is too urgent to admit of the giving or notice of plaintiff's application for an injunction, and that if notice was given, the said defendants would continue to commit the acts sought to be enjoined against and arrest and imprison the plaintiff and destroy his said business before such application for injunction could be heard.

Wherefore plaintiff prays that a temporary writ of injunction be issued restraining the said defendants, and each and every of them, their officers, agents and servants, from arresting the plaintiff upon any charge made against him for the violation of said sections

745 and 746 of said ordinance No. 101 of the series of 1898 and from stationing or maintaining police officers, or other persons, at or near plaintiff's said premises for the purpose of compelling the observance of said sections of said ordinance; that said sections 745 and 746 of said ordinances No. 101 of the series of 1898 be declared void; and that upon the final hearing of this case said injunction be made perpetual; and that plaintiff may have such other and further relief as shall be agreeable to equity.

T. J. O'DONNELL &
MILTON SMITH,
Attorneys for Plaintiff.

5/23/1/7.

STATE OF COLORADO, } *ss:*
Arapahoe County, }

Daniel Cronin being first duly sworn on oath, says that he
34 is the plaintiff the — in the foregoing cause; has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters and things therein stated on information and belief, and as to those matters he believes them to be true.

DANIEL CRONIN.

Subscribed and sworn to before me this 24th day of May, A. D. 1901.

My commission expires Jan. 8, 1904.

PERCY ROBINSON,
[SEAL.] *Notary Public.*

(Endorsed:) No. 32811—div. 1 In the district court of Arapahoe county Daniel Cronin, plaintiff, *vs.* Frank Adams, *et al.*, defendant-. Complaint Filed in district court Arapahoe county, Colo., May 24, 1901, Otis B. Spencer, clerk. T. J. O'Donnell and Milton Smith.

35 *And afterwards*, and on, to-wit, the 24th day of May, A. D., 1901, the same being one of the regular juridical days of the April term, 1901, of said court, the following proceedings *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN *vs.* FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver.	Injunction.	32811.

In this cause, on filing the complaint herein, verified by the plaintiff, and on motion of T. J. O'Donnell & Milton Smith, his attorneys,

it is ordered that, upon the giving of a bond in the sum of one thousand dollars, with surety to be approved by the clerk of this court, an injunction issue, enjoining and restraining the defendants from arresting the plaintiff or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinance No. 101 of the series of 1898, and from arresting any woman or women that may be in or upon said plaintiff's said premises upon charge of a violation of either of said sections, and from interfering with said plaintiff's said business upon any charge made in connection with said sections 745 and 746, until the further order of this court.

By the court:

P. L. PALMER, *Judge.*

Dated, Denver, Colorado, May 24, A. D., 1901.

36 *And afterwards*, and on, to-wit, the 24th day of May, A. D., 1901, came the plaintiff by his attorneys, and filed herein his undertaking on injunction;

And said undertaking is in words and figures as follows, to-wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court of the County of Arapahoe, State of Colorado.

DANIEL CRONIN, Plaintiff,
vs.
FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Defendants. } Undertaking on Injunction.

Whereas, the above named plaintiff has commenced or about to commence an action in the district court of Arapahoe county, and State of Colorado, against the above named defendants, and is about to apply for an injunction, in said action, against said defendants, enjoining and restraining them from the commission of certain acts, as in the complaint filed in the said action is more particularly set forth and described:

37 *Now, therefore*, we, the undersigned, residents of the county of Arapahoe, State of Colorado, in consideration of the premises and of the issuing of said injunction, do jointly and severally undertake in the sum of one thousand dollars and promise to the effect that, in case said injunction shall issue, the said plaintiff will pay to the defendants all costs and damages which shall be awarded

against the complainant in case the said injunction shall be modified or dissolved in whole or in part.

Dated this 24th day of May, A. D., 1901.

DANIEL K. HICKEY.
FRANK McPHILLIPS.

STATE OF COLORADO, *County of Arapahoe,* } ss:

Daniel K. Hickey and *Frank McPhillips,* the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, says: That he is a resident and freeholder within the said Arapahoe county, and that he is worth the sum specified in the said undertaking as the penalty thereof, over and above his just debts and liabilities in property not by law exempt from execution in this State.

DANIEL K. HICKEY.
FRANK McPHILLIPS.

Subscribed and sworn to before me, this 24 day of May, A. D., 1901.

38 My commission expires July 27th, 1903.

[SEAL.] LINCOLN B. LIVINGSTON,
Notary Public.

Daniel Hickey: Terrace 3723 to 3735 High St.
4 houses, value $2800. Encumbrance $1000.
2 lots, Gaylord bet. 25th & 26th.
Value $1600.00. Encumbrance $400.00.
Frank McPhillips: Lots 5 & 6 Case & Eberts addition.
Value, $6000.00, clear.

(Endorsed:) No. 32811—div. 1 District court Arapahoe county Daniel Cronin, plaintiff, *vs.* Frank Adams *et al.*, defendant-. *Undertaking on injunction* Approved and filed this 24 day of May, 1901. Otis B. Spencer, —, by E. E. Sommers, deputy clerk.

39 *And thereupon,* and on, to-wit, the 24th day of May, A. D. 1901, writ of injunction issued out of said court directed to the said defendants.

And said writ, with the return of the sheriff thereon, is in words and figures as follows, to-wit:

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STATE OF COLORADO, *County of Arapahoe,* } ss:

In the District Court of Arapahoe County.

DANIEL CRONIN, Plaintiff,
vs.
FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Defendants. } Injunction.

To the People of the State of Colorado to Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire & police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, send greeting:

The above named plaintiff having filed his complaint in our district court of the second judicial district, in and for the county of Arapahoe, against the above named defendants, praying for an injunction against said defendant- requiring them to refrain from certain acts, in said complaint, and hereinafter more particularly mentioned: on reading the said complaint in this action, duly verified on oath by said plaintiff, and it satisfactorily appearing to Hon. P. L. Palmer, one of the judges of said court, therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor, and the necessary and proper undertaking having been given.

We, therefore, in consideration thereof, and of the particular matters in the said complaint set forth, do strictly command you *that* each and every of you, that until the further order of said court, you and each of you, your and each of your servants, agents, attorneys, employés and all persons acting under the control, authority or direction of you, do absolutely refrain from and desist from arresting the plaintiff or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinance No. 101 of the series of 1898, and from arresting any woman or women that may be in or upon said plaintiff's said premises upon charge of a violation of either of said sections, and from interfering with the said plaintiff's said business upon any charge made in connection with said sections 745 and 746, until the further order of this court.

Witness Otis B. Spencer, clerk of the district court of the [SEAL.] county of Arapahoe, and the seal of said court this 24th day of May, A. D. 1901.

OTIS B. SPENCER, *Clerk,*
By E. E. SOMMERS,
Deputy Clerk.

41 STATE OF COLORADO, } ss:
County of Arapahoe, }

I do hereby certify that I have duly executed the within writ on this 25th day of May, A. D. 1901, by delivering to and leaving with Frank Adams, John T. Bottom and William H. Griffith, *constituting* the fire and police board of the city of Denver and Hamilton Armstrong, chief of police of the city of Denver, the within named defendants personally each and every one of them a true copy of the within writ in the county and State aforesaid.

ROB'T J. JONES, *Sheriff,*
By HARRY W. GRUBB,
Deputy Sheriff.

(Endorsed:) No. 32811, div. 1. Injunction District court. Daniel Cronin, plaintiff, *vs.* Frank Adams, *et al.*, defendant-. Received sheriff's office 10:05 o'clock a. m. 5/25, 1901. Rob't J. Jones, sheriff, Watson, deputy. Filed in district court, Arapahoe county, Colo. May 31, 1901. Otis B. Spencer, clerk.

42 *And afterwards,* and on, to-wit, the 27th day of May, A. D., 1901, came the defendants, by their attorneys, Messrs. H. M. Orahood and H. L. Ritter, and filed herein their demurrer;

And said demurrer is in words and figures as follows, to-wit:

STATE OF COLORADO, } ss:
County of Arapahoe, }

In the District Court.

DANIEL CRONIN, Plaintiff,
vs.
FRANK ADAMS ET AL., Def'ts. } No. 32811. Demurrer.

Come now the defendants in the above entitled cause by their attorneys, H. M. Orahood and H. L. Ritter, and demur to the complaint herein, and for grounds of demurrer say:

1. That the complaint does not state facts sufficient to constitute a cause of action as against these defendants.

5-27-'01
RR

H. M. ORAHOOD,
H. L. RITTER,
Attorneys for Defendants.

43 (Endorsed:) No. 32811. 1 District court Arapahoe county. Daniel Cronin *vs.* Frank Adams, *et al.* Demurrer Filed in district court Arapahoe county, Colo. May 27, 1901, Otis B. Spencer, clerk. H. M. Orahood, H. L. Ritter, attorneys for defendants.

44 *And afterwards*, and on, to-wit, the 27th day of May, A. D., 1901, came the defendants, by their attorneys and filed herein their motion;

And said motion is in words and figures as follows, to-wit:

STATE OF COLORADO, } ss.
County of Arapahoe, }

In the District Court.

DANIEL CRONIN, Plaintiff, }
vs. } No. 32811. Motion.
FRANK ADAMS ET AL., Defendants. }

Now come the defendants and move the court to dissolve the injunction heretofore ordered by this court, on to-wit, the 25th day of May, 1901, and issued by virtue of such order on the 25th day of May, 1901, and as reasons therefor state:

1. That it appears from the complaint that the plaintiff has a complete, full and adequate remedy at law.

2. That said injunction was improvidently granted and issued.

3. That it appears from the facts alleged in the complaint that this court has no equitable jurisdiction of the matters in controversy, and that the court issued the injunction without jurisdiction and power so to do.

4. That said injunction was granted *ex parte* and without
45 notice, and no matters are set up in the complaint or otherwise which show a necessity or cause for immediate action on the part of this court in issuing said injunction; that the showing to the court by the plaintiff of the necessity of issuing the injunction without notice to the defendant was insufficient, in that no affidavits or other evidence were submitted to the court showing facts of urgency, and the only showing made to the court was the complaint herein duly verified by the plaintiff, which complaint attempted to allege sufficient facts to warrant the court in granting the said temporary injunction without notice.

H. M. ORAHOOD,
H. L. RITTER,
Att'ys for Defendants.

(Endorsed:) No. 32811. 1 District court Arapahoe county. Daniel Cronin, *vs.* Frank Adams *et al.* Motion Filed in district court Arapahoe county, Colo. May 27, 1901, Otis B. Spencer, clerk. H. M. Orahood, H. L. Ritter, attorneys for defendants.

46 *And afterwards*, and on, to-wit, the 31st day of May A. D., 1901, came the plaintiff, by his attorney, and filed herein his summons,

And said summons, with the return of the sheriff thereon, is in words and figures as follows, to-wit:

STATE OF COLORADO, *County of Arapahoe,* } ss:

In the District Court.

DANIEL CRONIN, Plaintiff,
vs.
FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM GRIFFITH, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Defendants. } Summons.

The People of the State of Colorado to the defendants above named, Greeting:

You are hereby required to appear in an action brought against you by the above named plaintiff, in the district court of Arapahoe county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county; or, if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service, or judgment by default will be taken against you according to the prayer of the complaint; and if a copy of the complaint in the above entitled action be not served with this summons, or if
47 the service hereof be made out of this State, then ten days additional to the time hereinabove specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to enjoin and restrain the defendants, and each of them from arresting the plaintiff or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinance No. 101 of the series of 1898, and from arresting any woman or women that may be in or upon said plaintiff's said premises upon charge of a violation of either of said sections, and from interfering with the plaintiff's said business upon any charge made in connection with said sections 746 and 745, until the further order of this court, and to procure a decree of this court that sections 745 and 746 of the ordinance No. 101 of the series of 1898 of the city of Denver are illegal and void; and for costs, as will more fully appear from the complaint in said action to which reference is here made; a copy of which is herewith served.

Given under our hands at the city of Denver, in said county this 24 day of May, A. D., 1901.

T. J. O'DONNELL &
MILTON SMITH,
Attorneys for Plaintiff.

STATE OF COLORADO, }
County of Arapahoe, } ss:

I do hereby certify that I have duly served the within summons, together with a copy of the complaint in the within stated action, on this 25th day of May, A. D., 1901, by delivering to and leaving with Frank Adams, John T. Bottom and William H. Griffith,
48 constituting the fire and police board of the city of Denver and Hamilton Armstrong, chief of police of the city of Denver, the said defendants each and every of them personally, in the county of Arapahoe, a copy of the said summons, together with a copy of the complaint in the action therein mentioned, thereto attached.

ROB'T W. JONES, *Sheriff*,
By HARRY W. GRUBB, *Deputy*.

(Endorsed:) No. 32811 Div. 1 Summons In district court, Arapahoe county. Daniel Cronin, plaintiff, *vs.* Frank Adams, *et al.*, defendant-. Received sheriff's office 10:05 o'clock a. m. 5/25, 1901. Rob't J. Jones, sheriff, Watson, deputy. Filed in district court, Arapahoe county, Colo. May 31, 1901, Otis B. Spencer, clerk. T. J. O'Donnell & Milton Smith, attorneys for plaintiff, offices, 822–826 Ernest & Cranmer block, Denver, Colorado.

49 *And afterwards*, and on, to-wit, the 10th day of June, A. D., 1901, the same being one of the regular juridical days of the April term, 1901, of said court, the following proceedings *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come the parties hereto by their attorneys respectively, and thereupon this cause comes on to be heard upon the defendants' motion to dissolve the temporary writ of injunction issued herein, is argued by counsel to the hour of adjournment, and further argument to be resumed at a time to be hereafter named by the court.

SAME DAY (*June* 10, 1901).

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come the parties hereto by their attorneys respectively, and thereupon this cause comes on to be heard upon the defendants' demurrer to the complaint herein, is argued by counsel to the hour of adjournment to be resumed at a time to be hereafter named by the court.

50 *And afterwards*, and on, to-wit, the 18th day of June, A. D., 1901, the same being one of the regular juridical days of the April term 1901, of said court, the following proceedings *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come the parties hereto by their attorneys respectively, and thereupon this cause comes on again to be heard upon the defendants' motion to dissolve the temporary injunction herein is argued by counsel and the court not being sufficiently advised in the premises, the matter is submitted to the court for its further consideration.

SAME DAY, *June* 18, 1901.

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come the parties hereto by their attorneys respectively, and thereupon this cause comes on again to be heard upon the defendants' demurrer to the complaint herein is argued by counsel at the conclusion of which and the court not being sufficiently
51 advised in the premises, the matter is submitted to the court for its further consideration.

And afterwards, and on to-wit, the 3d day of July, A. D., 1901, the same being one of the regular juridical days of the April term, 1901, of said court, the following proceedings *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come again the parties hereto by their attorneys respectively, and thereupon this cause having been heretofore submitted to the court upon the demurrer of the said defendants to the complaint herein and the court being now sufficiently advised in the premises, doth overrule said demurrer.

And afterwards, and on, to-wit, the same day, (the 3d of July, 1901), the following further proceedings *inter alia*, were had and entered of record in said court, to-wit:

DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come again the parties hereto by their attorneys respectively, and thereupon this cause having been heretofore sub-

mitted to the court upon the defendants' motion to dissolve the temporary injunction issued herein, and the court being now sufficiently advised in the premises, doth deny said motion; and thereupon, on motion of plaintiff,

52 It is ordered by the court that the temporary injunction heretofore issued in this cause be made permanent and that the plaintiff have judgment for cost and that a decree be prepared and when signed, let the same be recorded in the judgment book.

And afterwards, and on, to-wit, the same day, (the 3d of July, 1901), the following proceedings *inter alia*, were had and entered of record in the judgment book of said court, to-wit:

DANIEL CRONIN *vs.* FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver.	32811.	Injunction.

This cause came on to be heard upon the motion of the defendants to dissolve the injunction and the demurrer to the complaint, the plaintiff appearing by Milton Smith, Esquire, his attorney, the defendants appearing by Harper M. Orahood and Halsted L. Ritter, Esquires, their attorneys, and the court having heard the arguments of counsel, and being sufficiently advised in the premises, denied the motion to dissolve the injunction and overruled the demurrer, whereupon counsel for the defendants elected to stand upon their demurrer, and upon motion of counsel for the plaintiff,

53 It is ordered that judgment be entered herein in favor of the plaintiff; and

It is ordered, adjudged, and decreed that said temporary injunction heretofore issued herein be made permanent, and that the defendants, and each and every of them, their servants, agents, employés and all persons acting under their control, authority or direction, be and hereby are perpetually enjoined and restrained from arresting the plaintiff, or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinances No. 101 of the series of 1898 of the city of Denver, Arapahoe county, Colorado, at 1761 Champa street in said city, county and State, and from arresting any woman or women that may be in or upon said premises at said 1761 Champa street upon charge of a violation of said sections, and from interfering with the plaintiff's said business at said place upon any charge made in connection with said sections 745 and 746.

It is further ordered that the said plaintiff have judgment for his costs to be taxed.

By the court:

P. L. PALMER, *Judge.*

And afterwards, and on, to-wit, the same day, (the 3d of July, 1901), the following further proceedings, *inter alia*, were had and entered of record in said court, to-wit:

54 DANIEL CRONIN
vs.
FRANK ADAMS ET AL. } 32811. Injunction.

At this day come the said defendants by their attorneys, and pray an appeal to the supreme court of the State of Colorado, which is allowed upon condition that they tender to the judge of this court within sixty days from this day their bill of exceptions by them reserved herein, which when signed and sealed by said judge shall be filed herein as of this day.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

I, *Otis B. Spencer*, clerk of the district court of Arapahoe county, State aforesaid, do hereby certify the above and foregoing to be a true, complete and perfect transcript and copy of complaint, summons, undertaking and writ of injunction, demurrer, motion, and orders of court had and entered of record in a certain cause in said court lately depending, wherein Daniel Cronin was plaintiff and Frank Adams *et al.* were defendants, as the same now remain on file and of record in this office.

Witness my hand and seal of said court at the court house in Denver, county and State aforesaid, this 27th day of August, A. D. 1901.

[Seal District Court, Arapahoe Co., Colorado.]

OTIS B. SPENCER, *Clerk.*
E. E. SOMMERS, *Deputy.*

Approved:
T. J. O'DONNELL &
MILTON SMITH,
Att'ys for Pl'ff.

55 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire & Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee. } Assignment of Errors.

Come now the defendants as appellants and say that there is manifest error in the record and proceedings aforesaid, and in the judgment therein rendered as follows:

1. The court erred in granting the temporary injunction asked by the plaintiff *ex parte* and without notice to the defendants, and without any evidence or affidavits in support of the application for the said injunction.

2. The court erred in granting the temporary injunction in said cause.

3. The court erred in over-ruling the motion of the defendants to dissolve the temporary injunction.

4. The court erred in overruling the demurrer of the defendants to the complaint.

5. The court erred in entering an order in said cause over-
56 ruling the motion of the defendants to dissolve the temporary injunction.

6. The court erred in entering an order overruling the demurrer of the defendants to the complaint.

7. The court erred in entering an order making said temporary injunction a permanent injunction.

8. The court erred in entering judgment in favor of the plaintiff.

9. The court erred in entering the decree in favor of the plaintiff making the temporary injunction a permanent injunction and granting to the plaintiff judgment for costs.

10. The judgment and decree of the court is contrary to the law.

H. M. ORAHOOD,
HALSTED L. RITTER,
Attorneys for the Appellants.

(Endorsed): 4392 Filed in supreme court Aug. 30, 1901. Horace G. Clark, clerk.

57 And afterwards, and on to-wit, the 7th day of October, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:—

FRANK ADAMS ET AL., Appellants, *vs.* DANIEL CRONIN, Appellee. } 4392. Appeal from District Court of Arapahoe County.

At this day, upon consideration thereof, it is ordered by the court that the appellee be and the same is hereby ruled to file his briefs within twenty days from this date, and appellants to reply within ten days thereafter.

And it is further ordered that the motion to advance be and is hereby denied, with leave to renew when case is at issue.

58 And afterwards, and on to-wit, the 21st day of October, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:—

In re Stipulations.

At this day upon consideration thereof, it is ordered by the court that the stipulations of parties in the following cases for an extension of time for filing abstracts and briefs be, and the same are hereby allowed :—

* * * * * * * *

FRANK ADAMS ET AL.
vs.
DANIEL CRONIN. } 4392.

59 And afterwards, and on to-wit, the 24th day of December, A. D. 1901, the same being one of the regular juridical days of the September term, A. D. 1901 of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit :—

FRANK ADAMS ET AL., Appellants,
vs.
DANIEL CRONIN, Appellee. } 4392. Appeal from the District Court of Arapahoe County.

At this day for good cause appearing, it is ordered by the court that this cause be, and the same is hereby advanced for final hearing.

60 And afterwards, and on to-wit, the 8th day of April, A. D. 1902, the same being one of the regular juridical days of the January term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit:

FRANK ADAMS ET AL., Appellants,
vs.
DANIEL CRONIN, Appellee. } 4392. Appeal from the District Court of Arapahoe County.

Now comes H. L. Ritter, Esquire, attorney for appellants, and Milton Smith, Esquire, attorney for appellee also comes; and thereupon this cause is argued orally and submitted to the consideration and judgment of the court.

61 And afterwards, and on to-wit, the 5th day of May, A. D. 1902, the same being one of the regular juridical days of the April term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to-wit :—

FRANK ADAMS, JOHN T. BOTTOM, WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.
} 4392. Appeal from the District Court of Arapahoe County.

At this day this cause coming on to be heard, as well upon the transcript of proceedings and judgment had in said district court in and for the county of Arapahoe as also upon the matters assigned for error herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is manifest error in the proceedings and judgment aforesaid of said district court. It is therefore considered and adjudged by the court that the judgment of said district court be, and the same is hereby reversed, annulled, and altogether held for naught, and that this cause be remanded to said district court with instructions to dismiss the action. It is further considered and adjudged by the court that said appellants do have and recover of and from said appellee their costs in this behalf expended, to be taxed, and that they have execution therefor. And let the opinion of the court filed herein be recorded.

62 And thereupon, and on the same day, to-wit, the 5th day of May, A. D. 1902, there was filed in the office of the said clerk the opinion of this court in said cause.

And said opinion is in words and figures as follows to-wit:—

63 FRANK ADAMS ET AL., Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police, Appellants,
vs.
DANIEL CRONIN, Appellee.
} No. 4392.

Appeal from the district court of Arapahoe county.

Chief Justice CAMPBELL delivered the opinion of the court.

The district court issued a permanent writ of injunction restraining the defendants below, appellants here, from enforcing the provisions of sections 745 and 746 of article 15 of the general ordinances of the city of Denver, upon the ground that they are unconstitutional and that plaintiff had no adequate remedy at law. They read:

"SEC. 745. Each and every liquor saloon, dram shop, or tippling house keeper * * * who shall have or keep, in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person

shall be permitted to enter from the outside, or from such liquor saloon, dram shop, or tippling house, and there be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided."

"SEC. 746. No person * * * having charge or control of any liquor saloon, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop, or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house or liquor saloon, or in any place adjacent thereto or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

64

This ordinance was before our court of appeals in Walker *v.* The People, 5 Colo. App. 38, and in City of Denver *v.* Domedian, 1st Colo. Dec. p. 441, 15 Colo. App.

In the former case, under the evidence, and in the latter, upon the stipulated facts, it was held that the cases as made, did not come within the prohibition. In speaking of these regulations, however, Mr. Justice Wilson in the latter case said:

"We agree that the ordinance is a good one, that its objects are most praise-worthy, and that its rigid enforcement would meet with the approval of every good citizen."

The question of its constitutionality was not there mooted, but this expression of Judge Wilson, if only dictum, is an indication of what his view would be had its validity been assailed.

The chief object of the ordinance was there said to be to suppress the evils incident to the "frequenting of saloons by females, and the attendant results so offensive to decency and the moral sense of the public."

The power to make these particular regulations was expressly conferred by the General Assembly upon the city council of the city of Denver by the 5th clause of subdivision twelve of sec. 20 of the charter, which provides:

"That no liquor saloon, dram shop or tippling house shall have or keep in connection with or as part of such saloon tippling house or dram shop, any wine room or other place, either with or without doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such tippling house or dram shop, and there be supplied with any kind of liquor whatsoever."

65

Plaintiff does not deny that he has kept a wine room into which

he permits women to enter and there be supplied with liquor and suffers them to remain therein for that purpose, contrary to the specific provisions of these sections. Indeed he admits that he has violated the ordinance in both particulars, and proposes, unless prevented by the municipal authorities, to continue to do so. So that the principal question in the case is as to the constitutionality of the charter, rather than of the ordinance, for the latter confessedly is authorized by the charter. The ordinance is good if the charter provision is constitutional. Two questions are pressed by plaintiff for determination: First, was the case as made by the complaint one calling for the interposition of a court of equity? Second, is the charter provision constitutional?

1. The plaintiff does not contend that he is entitled to equitable relief by injunction unless the charter is void. Since, as appears later in the opinion, we hold it valid, it is not absolutely necessary to decide whether the admitted facts of the complaint warrant the granting of an injunction. This court does not look with favor upon the practice of restraining municipal authorities from executing municipal ordinances which so vitally concern the tranquillity of the community and good order of society. While it is true,
66 as said in the case of City of Denver *et al. v.* Beede, 25 Colo. 172, that in exceptional cases a court of equity will restrain a prosecution at law when the legal question involved is the same at law as in equity, such is not the general rule; and a clear case should be made out before such extraordinary relief is awarded. It is not necessary here, to indicate in what cases such relief will, and in what it will not, be given. But it is doubtful if this complaint is so essentially different from that in the Beede case as to render inapplicable the rule there announced. We mention this point for the purpose of again emphasizing our view that only in extreme and exceptional cases should a court of equity interfere with municipal authorities in the enforcement of such ordinances.

2. So far as the question at issue is concerned, these sections of the ordinance practically prevent a saloon keeper from permitting women to frequent what are called wine rooms, there to be supplied with liquor; and it is only with respect to that feature of the ordinance that we are at present concerned, although it may be that the principles which govern this particular clause of the enactment equally apply to the others. As we understand the argument of his counsel, plaintiff's position is that these sections are unreasonable because they discriminate against women solely on account of their sex; that they are unconstitutional in that they deprive defendant of his property without due process of law, destroy his right to pursue a lawful calling, and deny to him the equal rights and privileges which every citizen has both under the Federal and our State constitution; that they violate sec. 423 of Mills' Annotated Stat-
67 utes, which preserves to all the citizens of the State equal enjoyment of accommodations, advantages, facilities and privileges of inns, restaurants, churches, barber shops, public conveyances, theatres, and other places of public resort, or amusement.

With respect to the latter contention, it is sufficient merely to say that if this section, when enacted, gave to women the right equally with men to frequent saloons, and if such right depended solely upon statute, it was taken away by the General Assembly, when at a later date it adopted a charter for the city of Denver, whereby authority was conferred upon the city to deprive women of the enjoyment of the so-called right.

Probably plaintiff's theory may be made still more clear by a summary of the argument of his counsel. He argues that the saloon keeper has as much right to sell liquor to women and to allow them within his place of business, whether in the saloon proper or in a room adjacent thereto, as he has to sell to men and to permit them within such places; that a woman has as much right to buy and drink liquor as men, and if so, the keeper of a saloon has the correlative right to sell to her with as much freedom as to men; that since women have been given the right of suffrage in this State, and in all respects stand upon a legal equality with men, they have the same right as men to the pursuit of happiness and to avail themselves of all the rational enjoyments that are open to their brothers, among which is the right to enter saloons and there buy liquor. Otherwise expressed, counsel says if a woman has a right to go into a saloon and get a drink, the same as a man, which he insists is true, the saloon keeper has a right to sell her that drink, and any
68 ordinance which prevents him from doing so is an invasion of his civil and property rights. If she, equally with a man, has the right to buy and the saloon keeper may not sell to her, he is deprived of a property right without due process of law, *i. e.* the right to carry on a lawful business with customers entitled to patronize him.

If this ordinance was passed under cover of the incidental powers of the city, and if it also appeared to the court to be unreasonable, unfair, partial, arbitrary, or oppressive, it might be nullified. But, if it is subject to such objections only, which does not seem to us to be true, still it could not be set aside upon any of those grounds for the General Assembly has expressly given to the city council authority to pass it in the form in which it is expressed, and if constitutional, it must stand.

Phillips *v.* Denver, 19 Colo. 183.

The charter provision comes clearly within the general police power, which every sovereign State, through its legislative department, possesses; and while, as counsel for plaintiff contends under the guise or pretense of passing laws for the protection of the public morals and the general welfare and safety of the people, the legislature may not contravene constitutional provisions, yet, where the legislation is a proper exercise of the police power and the courts can see that it is reasonably adapted to the permissible end in view, it may not be declared unconstitutional merely because it places some restrictions upon individuals generally, or certain classes, with respect to certain callings.

Under the license laws of this State no one may engage in the business of selling liquor without a license. He has no absolute right to sell at all. It is only a privilege he gets when a
69 license is granted. The city of Denver, under its charter, has the exclusive power to prohibit, restrain, tax and regulate the sale of intoxicating liquors. It may exercise that power to prohibit the sale altogether; or, if it see fit, it may regulate the sale and impose such conditions as it deems necessary. Under these license laws, one may not engage in the liquor traffic as of common right, but may do so only upon compliance with prescribed regulations, and if he applies for a license under which only he may lawfully sell, he is held to take that license with whatever restrictions or limitations are imposed by the authority which, and which only, can give him the coveted privilege. One of the conditions which the charter of Denver requires to be inserted in every liquor license, is the one of which plaintiff complains. He vigorously contends that the question is not one of morality at all, but merely whether or not, in the pursuit of a lawful calling, one may be deprived of the right of selling his property to whomsoever he pleases, and whether he may permit to enter his place of business all persons, both male and female, who wish to buy.

It is to be observed that no woman is here to assert her constitutional right to frequent wine rooms or to buy liquor, and it is also pertinent to remark that these particular sections do not prohibit women from going into saloons or from buying liquor. They are the only sections of the ordinance before us and neither contains a penalty for a violation thereof by women. Counsel says that sec. 751, which is not found in the record, provides a penalty to be visited upon females who remain in the places, or do the
70 acts, against which the prohibitions are aimed. However that may be, and it is not material to the decision of the case in hand, we are not reviewing a judgment pronounced against a woman for violating any provisions of these sections. The argument of counsel therefore, in behalf of females, against whom the alleged unwarranted discrimination is made, would come with better grace were one of them here complaining. Yet, as plaintiff in part bases his claim that he is deprived of his property and civil rights and denied the privileges of a citizen of the United States, upon the alleged fact that he is not allowed to sell liquor to a class that have the inalienable right to buy, we have considered the point.

If a discrimination is made against women solely on account of their sex, it would not be good; but, if it is because of the immorality that would be likely to result if the regulation was not made, the regulation would be sustained. That injury to public morality would ensue if women were permitted without restrictions to frequent wine rooms, there to be supplied with liquor, is so apparent to the average person, that argument to establish so plain a proposition is unnecessary. But, if some people might not be willing to concede this, it is enough to say that the General Assembly, speak-

ing through the city council, with whom the decision entirely rests, has so determined. Women therefore may properly be excluded from wine rooms as this ordinance provides, and if they have no constitutional right to insist upon being admitted to places there to be supplied with liquor, when the effect would be demoralizing to society, *a fortiori*, the saloon keeper may be prevented from furnishing them facilities for contributing to that result.

71 Again we say, the selling of liquor is not a lawful calling in the city of Denver, unless a license is secured for it, and it becomes such only when conducted as the license specifies. Plaintiff's whole argument proceeds upon false premises, and his conclusion is necessarily wrong. The right to sell liquor is not an inherent right of a citizen of the United States. The traffic in it is unlawful without a license, and it may be prohibited in Denver. It necessarily follows that all regulations for its sale and the privilege of selling when granted are solely within the lawful discretion of the city council under the existing charter of the city. This ordinance does not operate as a discrimination between different licensees. It applies equally to every one of that class, and the fact that it restricts the classes or persons to whom sales may be made in certain places or localities does not make it invalid. All courts can readily see that the restrictions therein found and the classification made with respect to the persons permitted to frequent wine rooms for supplying themselves there with liquor, are based upon reasons that have their seat in the facts of nature, and that such regulations are conducive to and are reasonably adapted to secure, the worthy object of preserving public morality. We might well stop here, but, to show how other courts view such contentions as plaintiff makes, we refer to some leading decisions.

The Supreme Court of the United States in the case of Crowley *v.* Christensen, 137 U. S., 86, has thus effectually disposed of plaintiff's argument:

"The sale of such liquors in this way (by retail) has therefore been, at all times, by the courts of every State, considered
72 as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States."

The supreme court of Indiana in the case of Blair and others against Kilpatrick, 40 Ind. 312, and in Welsh *v.* The State, 126 Ind. 71, has held that a law providing for the granting of license to retail intoxicating liquors, which requires that the vendor shall be a

male inhabitant of the State, is not in conflict with the United States Constitution, which provides that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States. The supreme court of Ohio in Bergman *v.* Cleveland, 39 Ohio St., 651, decided that an ordinance which makes it an offence for the proprietor of a liquor saloon to employ females to serve his customers with such liquor, is valid, and does not contravene any provision of the State or Federal Constitution. In Lodano *v.* State, 25 Ala., 64, it was held that the legislature is not restricted by the Constitution from imposing such conditions as it may deem proper in licensing the sale of liquor, or such as in their opinion the good of the community may require, both as regards the persons to whom saloon keepers may sell and the quantities in which liquor may be sold. The court of appeals of Missouri in 35 Missouri Appeals, p. 532, upheld a law and ordinance which for-
73 bade the sale of intoxicating liquor to any student of the State university, or any school, college, or academy in the State.

The laws of many States prohibit the sale of intoxicating liquors to Indians, minors, habitual drunkards, and other classes of people, and, in many of the Southern States, before the civil war, sales to slaves and free negroes were forbidden. The holding in all the States has been uniform that such regulations when deemed by the legislature necessary or proper in the interests of good morals, may not be interfered with by the courts.

We conclude this brief review by referring to the authorities which are collated in the 17 American and English Enc. of Law, second edition, p. 210, *et seq.*, to Mugler *vs.* Kansas, 123 U. S., 623; the License cases, 5 How. 504 (16 Curtis 513); and *Ex parte* Christensen, 85 Cal. 208, where many cases are cited, and exhaustive opinions of learned judges may be examined.

In re Mary Maguire, 57 Cal. 604, it is held that a regulation which prohibited women from being employed in saloons to serve drinks, the same as men, was in conflict with that clause of the California constitution which expressly declared that no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession. It would seem that plaintiff, as well as the district court, relied strongly on this decision. We have no such constitutional provision. But if we had, we do not think it would be contravened by the ordinance in question; certainly not by the clause limiting the classes to whom sales may be made. Whatever weight this case had as an authority is
74 weakened, if not destroyed, by the subsequent cases in the same court of *Ex party* Hayes, 98 Cal. 555, and Foster against Police Commissioners, 102 Cal. 483, which overruled it and declared such regulations to be entirely proper and valid. In line with the later decisions in California is State *v.* Reynolds, 14 Mont. 383.

A case quite in point is that of Schwuchow *v.* City of Chicago, 68 Ill. 444, and as the principles which govern this case are so well

expressed there, we take the liberty of quoting from the opinion. The court speaking by Mr. Justice Walker, said:—

"The legislature, then, having conferred such power, it was for the common council to determine whether they would wholly suppress the sale of intoxicating liquors, or grant the privilege on such terms and conditions as they might choose. And the power was ample, under this grant, to impose as a condition, that when a license is granted it should be liable to revocation on the violation of the ordinances regulating the traffic, or, having absolute control over the whole subject of granting licenses, they may impose any other condition calculated to protect the community, preserve order, and to suppress vice.

These restraints are not like such as restrict the ordinary avocations of life, which advance human happiness, or trade and commerce—that neither produce immorality, suffering nor want. This business is, on principle, within the police power of the State, and restrictions which may rightfully be imposed upon it might be obnoxious as an illegal restraint of trade when applied to other pursuits. The city, then, had a right to make it a condition that appellant's grocery should be closed on election days, on Thanksgiving days, fast days, holidays, Sundays, or other days, or might have imposed as a condition that appellant should close his grocery at a particular hour on each evening; and for a violation of any of these conditions, have provided for a forfeiture of his license. They had the power to insert, as they have done, each and all of the prohibitions contained in his license; and the power grows out of the fact that it was discretionary to prohibit such sale of liquors, or license it on such terms as they might choose."

And as to the point that appellant in that case had accepted a license from the city which contained certain restrictions which he sought to repudiate, the court uses this language:

75 "But, above all, appellant, by accepting and acting under this license, consented that the mayor might, in his discretion, revoke it, and, having agreed to it, he now has no right to insist that it shall be adjudged forfeited by a judicial tribunal—by some process which does not occur to us as applicable to that end."

In the supreme court of Kentucky in Gastineau *v.* Commonwealth of Kentucky, a recent case reported in 49 Lawyers' Reports, Annotated, p. 111, a municipal ordinance was declared void which made it a misdemeanor for a woman to go into any building where liquor is sold or stand within 50 feet of such building. That is essentially different from the case at bar. Indeed the reasoning of the court in its brief opinion, clearly shows that an ordinance like that before us would be sustained. In a note to the case, the learned annotator has discussed the constitutionality of municipal ordinances which were alleged to discriminate against women. From his collection of authorities it would seem that if the restriction of an occupation was, as we have heretofore suggested, merely on account of sex, it might not be upheld; but, if it was on account of the

immorality that would result if the restriction was not made, the regulation would be valid.

That the regulations attacked here are a legitimate exercise of the police power of the State we have no doubt; that their object is to protect the morals of the community, to secure good order, and advance the general welfare cannot be gainsaid; that the right to sell liquor is not an inherent right of a citizen of the United States is beyond cavil; that plaintiff has not been deprived of any
76 property or civil right without due process of law, or denied any privilege belonging to a citizen of the United States, is equally clear. As so aptly expressed by the supreme court of Illinois in the Schwuchow case, *supra*—restraints and limitations upon the liquor traffic may be upheld, which might not be sustained as to callings that may be pursued as of common right. We are clearly of opinion that the regulations here complained of are not inhibited by any provision of the Federal or State constitution.

The judgment is therefore reversed and a judgment entered here dismissing the action.

Reversed and action dismissed.

And afterwards, and on to wit, the 29th day of May, A. D. 1902, came the said appellee by his attorney, and filed in said court his petition for rehearing:

And the said petition for rehearing is in words and figures as follows, to-wit:—

77 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. GRIFFITH, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants, *vs.* DANIEL CRONIN, Appellee.	No. 4392. Appeal from District Court of Arapahoe County.

Petition for Rehearing.

Now comes the said appellee, by Milton Smith, his attorney, and respectfully shows unto the court that this honorable court erred in its decision and judgment made and rendered in said cause in the following particulars:

1. The court erred in reversing the judgment of the district court of Arapahoe county.

2. The court erred in deciding that sections 745 and 746 of the Compiled Ordinances of the city of Denver are valid and not in conflict with the provisions of the constitution of the State of Colorado and of the United States.

3. That the decision of this court that said sections 745 and 746 of the Compiled Ordinances of the city of Denver are valid, is erroneous, because such decision is based upon the finding and de-
78 cision of this court that said sections are restrictions upon saloon keepers only, which could properly be made and enforced against saloon keepers, and that such restrictions no not constitute a violation of the rights of women under the Constitution of the United States.

4. That the decision of this court that sections 745 and 746 of the Compiled Ordinances of the city of Denver are valid, is erroneous, because such decision is based upon the finding and decision of this court that such ordinance was enacted in aid of public morality, notwithstanding there is nothing in the record in this case showing that such was the purpose of such ordinance, or that the enforcement of such sections of said ordinance would in any way aid or affect public morality.

5. That the decision of this court that said sections 745 and 746 of the Compiled Ordinances of the city of Denver are valid, is erroneous, because the same is based upon the decision and finding of this court that the prohibition of said sections is directed against the keeping of wine rooms and the keepers thereof only, and that no penalty is visited upon females for being or remaining in a saloon or wine room, whereas section 746 does prohibit females from being or remaining in any saloon or wine room, and they equally with the proprietor of such saloon or wine room are liable to the fine and imprisonment prescribed by section 751 of said ordinance, and in the complaint in this cause it appears that the appellee was arrested because of the presence of certain females in his saloon and wine room, and that it was the purpose of the appellants as the fire
79 and police board of the city of Denver to arrest not only said appellee, but all females found in his saloon or wine room, and the injunction issued in said cause restrained the said appellants from arresting any woman or women that might be upon appellee's premises.

Wherefore, appellee prays that a rehearing may be granted in said cause, that the judgment of the district court of Arapahoe county be affirmed, and that such other orders may be entered in said cause as shall be proper.

MILTON SMITH,
Attorney for Appellee.

(Endorsed:) No. 4392 In the supreme court in the State of Colorado. Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief or police of the city of Denver, appellants, *vs.* Daniel Cronin, appellee. Appeal from district court of Arapahoe county. Petition for rehearing. Milton Smith, attorney for appellee. Filed in supreme court, May 29 1902. Horace G. Clark, clerk.

80 And afterwards, and on to-wit, the 2d day of June, A. D. 1902, the same being one of the regular juridical days of the April term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to wit:

FRANK ADAMS ET AL., Appellants, *vs.* DANIEL CRONIN, Appellee. } 4392. Appeal from the District Court of Arapahoe County.

At this day, upon consideration thereof, it is ordered by the court that the petition of appellee for a hearing herein be and the same is hereby denied, and the opinion heretofore filed, on May 5th, A. D. 1902, be and *and* the same is hereby modified by entering judgment here dismissing the action.

81 And afterwards, and on to-wit, the 2d day of June, A. D. 1902, the same being one of the regular juridical days of the April term, A. D. 1902, of said court, the following proceedings, *inter alia*, were had and entered of record in said court, to wit:

FRANK ADAMS, JOHN T. BOTTOM, WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants, *vs.* DANIEL CRONIN, Appellee. } 4392. Appeal from the District Court of Arapahoe County.

At this day this cause coming on to be heard upon rehearing, as well upon the transcript of proceedings and judgment had in said district court in and for the county of Arapahoe as also upon the matters assigned for error herein; and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is manifest error in the proceedings and judgment aforesaid of said district court, it is therefore considered and adjudged by the court that the judgment aforesaid of said district court be and the same is hereby reversed, annulled and altogether held for naught, and that the petition for rehearing heretofore filed herein be denied and the opinion heretofore and on May 5, A. D. 1902 filed herein be modified by entering judgment here dismissing the action, which is now here accordingly done. It is further considered and adjudged by the court that said appellants do have and recover of and from said appellee their costs in this behalf expended to be taxed, and that they have execution therefor, and let the opinion of the court filed herein be recorded.

82 I, Horace G. Clark, clerk of the supreme court of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the transcript of record and assignment of errors

filed August 30th, 1901, and now remaining of record in my office, and of all orders had and entered of record in said court, of petition for rehearing, opinion of the said court, and the final judgment entered, in a certain cause in the said court lately pending, wherein Frank Adams, John T. Bottom and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, were appellants, and Daniel Cronin was appellee.

I further certify that the accompanying printed brief and argument for appellants, brief and argument for appellee, brief for appellee on motion for rehearing, and additional brief for appellee, are true and correct copies of said briefs and arguments as the same now remain on file in this cause in my office.

Seal Supreme Court, State of Colorado.

Witness my hand and the seal of said supreme court, affixed at my office, in the city of Denver, this 22nd day of July, A. D. 1902.

HORACE G. CLARK, *Clerk*,
By JOHN B. COOKE, *Deputy*.

83 [Endorsed:] No. 4392 In supreme court State of Colorado. Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire and police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver, appellants, *vs.* Daniel Cronin, appellee. Transcript of record.

84 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.

No. 4392. Appeal from the District Court of Arapahoe County.

Brief and Argument of Appellants.

H. M. Orahood, Halsted L. Ritter, attorneys for appellants.

85 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.

No. 4392. Appeal from the District Court of Arapahoe County.

Brief and Argument of Appellants.

Statement of the case.

Daniel Cronin filed his complaint in the district court of Arapahoe county, Colorado (see Abstract of Record, pages 2, 3, 4, 5, 6,
86 7 and 8), setting up that he had fitted up a saloon in the city of Denver at 1761 Champa street, at great expense, and had stocked the premises with large quantities of liquors at great expense, and had been carrying on the said business, under license from the city of Denver, for nine years; that he had been enabled to derive sufficient profits from the business to support himself and family; that he had a large sum of money invested in it; that in connection with his saloon he had wine rooms, and had been selling to women, and that a portion of his business and the profits derived therefrom accrued by reason of selling to women; that sections 745 and 746, of article 15, of ordinance No. 101, of the series of 1898, entitled "Liquor saloons, dram shops and tippling houses," prohibited women from entering the saloon and being served therein with liquor, the said sections being in full as follows:

"SEC. 745. Each and every liquor saloon, dram shop or tippling house keeper, licensed under the provisions of this article, who shall by himself or his agent, clerk or servant permit any gambling or riotous or disorderly, indecent or offensive conduct in or about his

place of business or premises, or who shall have or keep in connection with or as part of such liquor saloon, dram shop or tippling house, any wine room or other place, either with or without door or doors, curtain or curtains, or screen of any kind, into which any female person shall be permitted to enter from the outside, or from such liquor saloon, dram shop, or tippling house, and there
87 be supplied with any kind of liquor whatsoever, shall, upon conviction, be fined as hereinafter provided.

"SEC. 746. No person, whether as principal, clerk, agent or servant, having charge or control of any liquor saloon, dram shop or tippling house, or place where intoxicating or malt liquors are sold or given away, or any place adjacent thereto, or connected therewith, in any manner whatsoever, either by doors or otherwise, shall suffer or permit any female person to be or remain in such liquor saloon, dram shop, tippling house, or other place where intoxicating or malt liquors are sold or given away, for the purpose of there being supplied with any kind of liquor whatsoever. No person owning or having charge or control of any liquor saloon, dram shop or tippling house shall employ or procure, or cause to be employed or procured, any female person to wait or in any manner attend on any person in any dram shop, tippling house, or liquor saloon, or in any place adjacent thereto, or connected therewith, where intoxicating or malt liquors are sold or given away, nor shall any female person be or remain in any dram shop, tippling house, liquor saloon or place adjacent thereto or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

That because of the violation of this ordinance in reference to selling to women, he was arrested and found guilty of said vio-
88 lation and fined the sum of $50.00 on the 23d day of May, 1901; that the chief of police and the police officers were keeping strict watch of his premises and were threatening to arrest him whenever they saw women enter his premises, and if he is arrested on account of women entering his saloon and fined, and women are prevented from entering his place, it will absolutely destroy and render valueless his business and property; that he will be unable to pay the accumulated fines from frequent convictions and this will destroy his business and deprive him of his liberty, contrary to the law of the land and without due process of law; that the case is too urgent to permit of the giving of notice of the application for an injunction, and prays a temporary writ of injunction restraining the fire and police board and the chief of police from stationing or maintaining police officers or other persons at or near his premises for the purpose of compelling the observance of the sections of the ordinance before stated, and that said sections be declared void.

An injunction was accordingly granted by the judge, P. L. Palmer, of the district court, upon this complaint, and the fire and police board and chief of police were enjoined in accordance with the prayer of the complaint.

The defendant, the appellants here, filed a general demurrer to

the complaint that the same did not state facts sufficient to constitute a cause of action (see Abstract of Record, folio 39), and also filed a motion to dissolve the temporary injunction (see Abstract of Record, folios 42 and 43), on the grounds:

First. That it appears from the complaint that the plaintiff has a complete, full and adequate remedy at law.

89 Second. The said injunction was improvidently granted and issued.

Third. That it appears from the facts alleged in this complaint that this court has not equitable jurisdiction of the matters in controversy, and that the court issued the injunction without jurisdiction and power so to do.

Fourth. That said injunction was granted *ex parte* and without notice, and no matters are set up in the complaint or otherwise which show a necessity or a cause for immediate action on the part of the court in issuing said injunction; that the showing to the court by the plaintiff of the necessity for issuing the injunction without notice to the defendants was insufficient, in that no affidavits or other evidence were submitted to the court showing facts of urgency; that the only showing made to the court was the complaint herein duly verified by the plaintiff, which complaint attempted to allege sufficient facts to warrant the court in granting said temporary injunction without notice.

Upon the hearing on said demurrer and motion to dissolve the temporary injunction, the court overruled the demurrer and denied the motion, making the temporary injunction permanent. Appellants standing upon their demurrer and motion, have brought their appeal to this court.

Argument.

The first question presented to this court is as to the authority and jurisdiction of the district court to grant the injunction. We

90 take it to be a well-established rule that a court of equity will not, by injunction, restrain a prosecution at law, when the question is the same at law as in equity, and that an injunction will not issued to restrain a prosecution for a violation of a city ordinance on the ground that the ordinance is invalid, or on the ground of irreparable injury, or to prevent a multiplicity of suits.

The violations of the city ordinance are within the jurisdiction of the police magistrate of the city of Denver; from the police magistrate an appeal can be taken to the county court, and from the county court, by appeal or writ of error, to this court or the court of appeals. Any defense may be interposed before the police magistrate and again in the trial *de novo* in the county court upon appeal. This remedy is complete, full and adequate.

The court has fully considered the questions herein involved in the case of The City of Denver *vs.* Beede, 25 Colorado, 172. We think this case is absolutely the same as the one now presented to the court. In The City of Denver *vs.* Beede, an application for an injunction was

made by the proprietor of a theater in the city of Denver known as the Orpheum, alleging that he was giving Sunday performances in the same, and unless he was able to give such Sunday performances it would ruin his business and he could not conduct it successfully; that the ordinance making it unlawful to give Sunday performances, and for the violation of which he was arrested and threatened with arrest, was invalid. His grounds for the injunction were: First, irreparable injury; second, to *prevent multiplicity of suits*; third, ordinance invalid, and fourth, that it would ruin and de-
91 stroy his business. We cannot quote the entire opinion in this case, as it would be necessary to do, but reply upon the court to read the opinion, if not already familiar with it. It was decided in that case that none of the grounds urged were sufficient to warrant the granting of an injunction. In conclusion the court says:

"This is clearly an attempt to extend the writ of injunction beyond its scope and intent, and through this process, prevent the city from invoking the aid of competent tribunals to enforce this ordinance in the usual way, which, if permitted on the showing made, would be an abuse of that writ regarding which Chancellor Kent, in Attorney General *vs.* Utica Insurance Co., 2 Johns, Ch. 371, has aptly said: 'Nor ought the process of injunction to be applied but with the utmost caution. It is the strong arm of the court; and to render its operation benign and useful it must be exercised with great discretion and when necessity requires it.'"

We assert that the facts in the case now before the court are exactly similar and analogous to the facts set forth in the Beede case above, and that the decision in that case, being the law of the State, that the district court had no jurisdiction to issue the injunction in this case; that when it did so it totally disregarded the decision of this court and the law.

It was claimed by counsel, and will be contended for in appellee's argument to this court, that a property right was involved, and that this fact gave the court jurisdiction and the authority to
92 grant the temporary injunction, but there was just as much property right shown in the complaint of Beede, that if the ordinance was enforced and he was prevented from giving the performances on Sunday, his business would be ruined and destroyed. If Beede did not make a showing of property right sufficient to warrant a court of equity in granting the injunction, neither did Cronin in his complaint, by showing that if he is not allowed to sell to women his business will be ruined and destroyed. It cannot be successfully claimed that Cronin has any property right in his women customers; he only has a right to sell to such persons as the law permits. But this question properly belongs to our argument on the demurrer.

The following authorities sustain the decision in City of Denver *vs.* Beede, and uphold our contention that the district court had no power to grant the injunction:

In City of Bainbridge *vs.* Reynolds, 4 Municipal Corporation

Cases, page 584, the supreme court of Georgia considers the power to grant an injunction upon the following facts: An ordinance of the city of Bainbridge required the agents or representatives of each non-resident steam laundry to pay a special license of $100. An agent of a non-resident steam laundry alleged that the ordinance was unconstitutional, null and void and was unreasonable; that it was an interference with his business and would materially affect the same. The court said:

"Courts of equity will not, by injunction, prevent the institution of prosecutions for criminal offenses, whether the same be violations of State statutes or municipal ordinances; nor will they, upon
93 petition for an injunction of this nature, inquire into the constitutionality of a legislative act, or the validity or reasonableness of an ordinance making penal the act or acts for the doing of which prosecutions are threatened."

Paulk *vs.* City of Sycamore, 41 L. R. A., 772.
Foreheimer *vs.* Port of Mobile, 84 Ala., 127.
Waters-Pierce Oil Co. *vs.* Little Rock, 39 Ark., 412.
New Home Sewing Machine Co. *vs.* Fletcher, 44 Ark., 139.
Garrison *vs.* Atlanta, 68 Ga., 64.
Des Plaines *vs.* Poyer, 123 Ill., 348.
Yates *vs.* Batavia, 79 Ill., 500.
Schwab *vs.* Madison, 49 Ind., 329.
Dodge *vs.* Council Bluffs, 57 Iowa, 560.
Brown *vs.* Catlettsburg, 11 Bush. (Ky.), 435.
Hottinger *vs.* New Orleans, 42 La. Ann., 629.
Kansas City Cable R. Co. *vs.* Kansas City, 29 Mo. App., 89.
Banking Company *vs.* Jersey, 12 N. J. L., 258.
Morris Canal, etc., Co. *vs.* Mayor, etc., of Jersey City, 12 N. J. Eq., 252.
Davis *vs.* Amer. Soc. for Prev. Cruelty to Animals, 75 N. Y., 362.
94 West *vs.* Mayor, 10 Paige (N. Y.), 539.
St. Peter's Episcopal Church *vs.* Washington, 109 N. Car., 21.

In most, if not all of the above cited cases, it was attempted to set up property rights, but the court decided that such ordinances only limited and restricted the rights, and such limits and restrictions were known when the license was issued, and could not affect in any way the property acquired while pursuing business under and by virtue of the license.

II.

The court erred in overruling the demurrer to the complaint. The complaint alleges that the provisions of the ordinance hereinbefore named, which made it unlawful for women to enter a saloon, dram shop or tippling house and drink therein, was unconstitutional, illegal and void. The contention of counsel was that inasmuch as women had equal rights in Colorado with men, and had the right to vote, that this was an unlawful restrain- upon their civil

rights. We assert that the ordinances are not void; they do not constitute the slightest infringement upon the constitutional rights of women, as those rights are lawfully tested and properly understood. That this conclusion is sustained by all the authorities on the subject, and opposed by none, we shall attempt to show.

In Phillips *vs.* City of Denver, 19 Colo., 183, Mr. Justice
95 Elliot announced the following rule to be observed by the court in the construction of municipal ordinances:

"In determining whether a municipal ordinance is valid, the following distinction is to be observed: An ordinance expressly authorized by specific and definite legislative authority will be upheld unless it conflicts with the constitution of the State or nation, while an ordinance which the municipality assumes to pass by virtue of its incidental powers, or under a general grant of authority, will be declared invalid, unless it be reasonable, fair and impartial, and not arbitrary or oppressive."

An examination of the city charter can leave no doubt that the ordinance in question is of the character first referred to, in that it is expressly authorized by specific and definite legislative authority. By section 20, article II, chapter 1, subdivision 12, of the city charter, the city council is given exclusive power to provide for licensing, taxing and regulating all tippling houses, dram shops, and the selling and giving away all intoxicating liquors by any person within the city, and to tax and regulate the same, it being especially provided, *inter alia*, that no such institution shall be kept open on Sunday, and that no wine room or other place with doors, curtains or screens, in which any female person shall be permitted to enter, shall be kept in connection with any such dram shop, liquor saloon or tippling house.

It thus appears that while the legislature has vested in the
96 city council the exclusive power to license and regulate tippling houses and saloons, and the selling and giving away of intoxicating liquors, they are equally vested with the power to regulate and impose the conditions upon which such business shall be conducted, being expressly enjoined, however, as a condition to such right to so license and regulate, to see to it that no female person shall be permitted in or about places where liquor is sold, so that the ordinance claimed to be violated is not the result of an incidental power of the city council, but simply an execution of the express mandate and direction of the legislature.

In fact, it may be said that the ordinances are the joint production of the legislative bodies of both State and city, and it is the duty of the court to uphold them unless they conflict with the constitution. It is a well-settled principle of constitutional construction that the law in question must be upheld unless it clearly conflicts with the constitution. If there is only a doubt as to its constitutionality, that doubt must be resolved in favor of the law, but fortunately under the authorities which follow governing the law here considered, there is no shadow of doubt as to its constitutionality.

The only case which can be cited in support of the contrary view

is *In re* Mary McGuire, 57 Cal., 604. It may be claimed that this case upholds the contention that the ordinances in question discriminate between the sexes as to the pursuit of lawful occupations or pleasures, and violate those general provisions common to all constitutions which, briefly summarized, provide that no State shall make or enforce any law which shall abridge the privileges
97 or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the law; that all persons have the same natural, essential and inalienable rights of enjoying and defending their lives and liberties, and of acquiring, possessing and protecting property and of seeking and obtaining their safety and happiness, and that no person shall be deprived of life, liberty or property without due process of laws, and that all citizens of the State, regardless of race, color or previous condition of servitude, shall be entitled to full and equal enjoyment of the accommodations and privileges of inns, restaurants, churches, barber shops, public conveyances, theaters and other places of amusement.

The case does not justify any such conclusion. In the case *In re* McGuire, six supreme judges participated in its determination, and three of them did decide by a course of reasoning not necessary to follow, but clearly unsatisfactory and untenable, that the ordinance in question forbidding the employment of females where intoxicating liquors were sold, did violate the constitutional provision that no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, avocation or profession. The three other judges dissented from such conclusion, and two of them on the broad proposition that it was not the law, while the third, Judge McKinstry, agreeing with his dissenting associates to such extent concurred in the judgment on other grounds not applicable to this case, as his language, so appropriate here, will show. He says:

"I am not prepared to say, however, that the supervisors
98 can not, by proper legislation, prevent females from pursuing avocations which, although permissible to men, involve a propinquity of the sexes under such circumstances as may lead directly to immoral results, or to the desecration of the prudent reserve between members of the opposite sexes, which it is the province of wise legislation to encourage. It has always been understood that the prevention of such results was a proper exercise of the police power of the State. By such legislation the woman (or the man as the case may be) is not prohibited from pursuing any lawful business, vocation or profession 'on account of her sex;' she is prohibited because of the immorality or indecency connected with the business. For example: There might be a very good reason why women (and not men) should be employed as attendants at bathing establishments to which their own sex alone have admission, but if a law should be enacted prohibiting the employment of females as attendants at public baths—frequented by men only—would it be adjudged that the law was unconstitutional because persons would

thereby be prohibited from pursuing a vocation 'on account of her sex?' The constitution provides that no persons shall be prohibited from pursuing any lawful business merely because of his or her sex, but it does not prohibit the legislature from declaring certain conduct unlawful, even though it may constitute a 'business.'
99 The constitution does not, in my view, deny the power to enact such legislation as may prevent the intrusion of men into the conjoint pursuit with women of occupations which considerations of decency and morality require should be carried on by the latter separately, and *vice versa*, It is possible that the legislature is not permitted to indulge in an over-refined sense of propriety—amounting to mere sentimentality—and thus exclude females from taking part in honest occupations simply because they have in the past ordinarily been carried on solely by men, and may therefore seem in the prejudiced eyes of a more fortunate portion of the community, to detract from the modest reserve and retirement of the sex. But when competent legislative authority has declared that the pursuit of certain occupations by females impinges upon public decency, or, in its consequences, may involve a violation of public morality, I think the courts can declare the law unconstitutional only when it clearly appears that indecency and immorality are not connected with, nor a consequence of, the prosecution of such occupation by females."

The learned judge then proceeds to say that he does not agree that the article of the constitution in question, or any constitutional provision, prohibits the passage of any law or ordinance which would prevent the presence of women as attendants or otherwise, at
100 liquor saloons, bar rooms, etc., but consented to the discharge of the accused because the particular ordinance in question was void in that it was unreasonable, of ambiguous import and not of uniform operation (the ordinance permitting the female relatives of the liquor dealer to serve liquor, but not other females), and proceeds to point out wherein this is true of the ordinance there considered on account of certain facts and circumstances, unnecessary to mention, as they cannot possibly be claimed to exist as to the ordinances here involved. The result of a divided court in that case on the general proposition here involved would in this State have the effect of sustaining the *nisi prius* court which upheld the validity of the ordinances, so that we rather look upon the case of Mary McGuire, in 57 Cal., when fully analyzed, as sustaining and not opposing our contention. But, conceding it to be a clear and satisfactory authority against the view we take of this question, we have only to look at subsequent California cases (one of which is of very recent date), which are sweeping repudiations of any such doctrine, and as against which it could not stand for a moment as the law of that State, or as sustaining the contention claimed for it. And in all such latter cases the court seems to have been unanimous in its conclusions, there being apparently no division of opinion upon this important question.

In re ex parte, Hayes, 33 Pac. Rep., 337 (98 Cal., 555), decided in

1893, the question was squarely presented to that court as to whether or not an ordinance making it unlawful to sell intoxicating liquor in dance houses, or other places where females attend as wait-
101 resses, was such a discrimination against women in the matter of employment as would bring it in conflict with the identical section of the constitution referred to in the McGuire case, providing that "no person, on account of sex, shall be disqualified from entering upon or pursuing any lawful business, vocation or profession." (Which provision is much broader than any similar provision of our own constitution.) The court says:

"The fundamental principles which underlie and support legislation of this character were announced by the court in *Ex parte* Christensen, 85 Cal., 208; 24 Pac. Rep., 747, and also received an exhaustive discussion by the Supreme Court of the United States in the case of Crowley *vs.* Christensen, 137 U. S., 86, 11 Sup. Ct. Rep. 13; and upon the authority of these cases we hold that the ordinance under consideration here is a valid exercise of the power conferred by section 2 of article 2 of the constitution of the State upon counties, cities and towns, to make 'all such local, police, sanitary and other regulations as are not in conflict with the general laws.' It is claimed, however, by the counsel for the petitioner, that the ordinance makes a discrimination against women in the matter of employment, and is, therefore, in conflict with section 18, article 20, of the constitution of this State, which is in these words: 'No person shall, on account of sex, be disqualified from entering upon
102 or pursuing any lawful business, vocation or profession.' This section does not, in our opinion, operate as a limitation upon the power of the State, or its municipalities, to prescribe the conditions upon which the business of retailing intoxicating liquors shall be permitted to be carried on, or in regulating the manner in which such business shall be conducted."

The court thus considered the question not only settled in favor of the validity of the ordinance by the highest tribunal of the State, but also by the Supreme Court of the United States. The question was again before the supreme court of California in 1894, in the case of Foster *vs.* The Board of Police Commissioners of the City and County of San Francisco, 37 Pac. Rep., 763 (102 Cal., 483). In this case the court ably and elaborately reviews the question, using *inter alia*, the following language:

"The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at those retail liquor saloons than to any other source. The sale of such liquors has, therefore, been at all times, by the courts of every State, considered as the proper subject of legislative regulation. There is no inherent right in a citizen thus to sell intoxicating liquors by retail. See, also, Cooley, Const. Lim. (6th ed.), p. 342.

"It is also insisted that the ordinance under consideration is objectionable for want of uniformity, and that it discriminates
103 between different persons. That it affects all persons of certain classes without discrimination, and as to them acts uniformly,

can not be questioned. The question, however, is as to the power to discriminate at all. The power thus to discriminate is well settled by the authorities hereinbefore cited, and by many others. This power is exercised in relation to many other occupations besides that of selling liquor, and when promotive of the best interests of the people, is always sustained.

"The legislature cannot discriminate or grant an indulgence to one which is not accorded to another. But the legislature does discriminate, and in many cases properly, while in those cases where the public is affected only by depriving an individual of a right common to all others, the exercise of which is not attended with evil consequences, the above quotation applies.

"His protestation that he did not intend to, and would not in the future, procure or permit females to wait upon his customers, does not aid him. A man who in the past has shown himself willing to debauch the morals of the community to increase his business, would not in the future refrain from any line of conduct in the prosecution of his business, which would not bring upon himself, personally, the penalty of the law, whatever of evil it might bring to others. The ordinance was, therefore, not only con-
104 stitutional, but wise, and should be scrupulously observed by those interested with its execution."

It will thus be noted that the court expressly concedes that while the constitutional provisions in question claimed to be violated by these ordinances are such as to prevent the legislature from discriminating or granting an indulgence to one which is not accorded to another, nevertheless do not apply at all where such ordinances are enacted by virtue of what is commonly known as the police power in the exercise of which there may be actual discrimination, so long as it is a proper exercise of this wise, just and beneficent prerogative vested in all legislative bodies permitting them to enact salutary laws to protect the morals, etc., of the people.

Losing sight of the distinction in favor of the police power in considering the constitutional provision in question, may be the cause of much that is confusing and misleading in finding such ordinances a violation of such provisions. This is again aptly illustrated by the supreme court of California, in the case of *Ex parte* Christensen, 85 Cal., 208 (recently affirmed by the Supreme Court of the United States), and that court declares that "Whatever force this objection may have in reference to licenses to carry on the ordinary avocations of life, which are not supposed to have any injurious tendency, it has no force in cases of this character (regulating liquor traffic)."

It is well settled that the governing power may prohibit the manufacture and traffic in liquor altogether, provided it does not
105 interfere with interstate commerce, and if the governing power can prohibit a thing altogether, it can impose such conditions upon its existence as it pleases. The distinction observed in the above language is an important one, namely, "To carry on the ordinary avocations of life, which are not supposed to have any

injurious tendency." It may be, then, a discrimination against a woman to preclude her from the saloon, but it is a perfectly legal, wise and just discrimination, sanctioned by all the courts, and in no way conflicts with the rightful exercise of any of her constitutional rights as such rights are properly used and understood. It is no more of an illegal discrimination than those wholesome regulations barring minors or drunkards from saloons, the legality of which has never been questioned, yet their constitutional rights are just as sacred as those of others.

Again, in State *vs.* Reynolds, as sheriff, decided by the supreme court of Montana, in 1894, 36 Pac. Rep., 449 (14 Mont., 383), the same question, in principle, was before the supreme court of that State, and the court used the following language:

"Petitioner's counsel urge the proposition that the provisions of said statute are unconstitutional because, in effect, it prohibits a certain class, *i. e.*, women, from being employed in a place where intoxicating liquors are sold, and, therefore, restrains such persons from engaging in a lawful employment. This statute does not forbid the employment of women or minors, but it does prohibit all persons and companies from selling intoxicating
106 liquors in a place where women and minors are employed or assembled for the purpose of business. There seems to be wisdom and propriety in this provision, as a police regulation, and we fail to find in it the infringement of any provision of our constitution."

This same question was before the supreme court of Ohio in Bergmen *vs.* Cleveland, 39 Ohio State Reps., 651, and the supreme court of that State held that ordinances in substance identical with those here under consideration, were not unlawful discriminations against women and did not violate any part of the constitution of the State or of the United States, but were wise regulations, properly, legally and justly made by legislative bodies.

The State of California has been particularly selected for authority for the States upon the question at issue because the only different decision claimed to exist by defendant, or cited by the learned district court, was the case of McGuire, in 57 Cal. It fairly appears, however, that not only that State, but others, have completely and overwhelmingly silenced the contention that the ordinances in question are illegal discriminations, or conflict with State constitutions similar to our own, or with the Federal Constitution. We think the Supreme Court of the United States in numerous cases has equally settled this question in accordance with the views herein announced, by opinions, if not involving similar facts, at least involving similar principles, so that reference to one or two will suffice.

107 We quote the following language from Mugler *vs.* State of Kansas, 8 vol. Sup. Ct. Rep., 273:

"Referring to the contention that the right to sell intoxicating liquors was secured by the fourteenth amendment, the court said that 'so far as such a right exists, it is not one of the rights growing out of citizenship of the United States.' In Beer Co. *vs.* Massachu-

setts, 97 U. S., 33, it was said that 'as a measure of police regulation, looking to the preservation of public morals, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.'

"As was said in Munn *vs.* Illinois, 94 U. S., 124, while power does not exist within the whole people to control rights that are purely and exclusively private, Government may require each citizen to so conduct himself, and so use his own property, as to not necessarily injure another. But by whom, or by what authority, is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere, else society will be at the mercy of the few, who, regarding only their own appetites and passions, may be willing to imperil the peace and security of the
108 many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

While it is true that regulations in favor of health and morals of the people are inaugurated by the legislatures, the courts are to determine whether such regulations conflict with the constitution, as they occasionally do, but the Supreme Court of the United States has held that where such regulations are enacted in good faith for the protection of the public health, public morals or the public safety of the community, and have a substantial relation to those objects, it is the duty of the court to so adjudge and give effect to such laws (Mugler *vs.* Kansas, *supra*).

It being, then, a prerogative of the courts to determine whether the act is really in the interest of morality, as claimed by the legislative power, a few observations in this respect become pertinent. Keeping in view these principles as governing the relation of the judicial and legislative departments of the Government, is it possible to conceive any ground for the judiciary to declare that the ordinances in question have no substantial relations to the preservation of public morals or public safety, or were not fairly adapted to the end of protecting the community against evils which confessedly result from the intermingling of the sexes in con-
109 suming ardent spirit in saloons, wine rooms or dance halls? We think not.

With all due respect to the learned district judge, to our minds there is not the slightest justification for a contrary holding on the ground that the legislative department of the government, under the guise merely of police regulation, is by the ordinances in question aiming to deprive a class of citizens of their constitutional rights. A thousand times rather by such regulations do they preserve to the people the very rights claimed to be invaded. Who would dare maintain that the intermingling of opposite sexes under

such circumstances would not lead to immoral results and the desecration of those decent relations that should exist between them? Could a more debasing custom be well imagined to exist in a civilized and Christian community?

It may be well to recall what history substantiates, that the shocking debauchery and corruption that accompanied the period of decay of nations that have perished were largely the result of drunken revels of opposite sexes in the public wine places of their great cities. It may be safely asserted that every large city in this country has, at least, had the decency to recognize the immoral consequences of the conditions referred to as to discourage and prevent it by similar wholesome regulation. Such enactments have always been upheld by the courts when called upon, and this court should not depart from the rule. The ordinances should be enforced with an unsparing hand by those in authority, and to that end every proper aid should be afforded by all the power of
110 the judiciary. Any other course cannot but be fraught with the most perilous consequences to the morals, health and happiness of the people.

Respectfully submitted,

H. M. ORAHOOD.
HALSTED L. RITTER.

111 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.
} No. 4392.

Brief and Argument for Appellee.

T. J. O'Donnell and Milton Smith, attorneys for appellee.

112 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
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} No. 4392.

Brief and Argument for Appellee.

There is pending in this court a cause entitled Daniel Cronin *vs.* City of Denver, No. 4389, in which the identical question
113 here presented is also discussed. It is, *Has a saloon keeper the right to* sell intoxicating liquors to a woman in exactly the

same manner as he *has to a man?* The two cases should, therefore, be consolidated for purposes of argument and decision. Case No. 4389 comes to this court upon an appeal from the county court of Arapahoe county. It was there tried *de novo* on an appeal from the police magistrate court of the city of Denver. The complaint in the police court alleged that Daniel Cronin, appellee, had sold liquor to women, and asked to have him fined. It is claimed that to sell liquor to women is in violation of certain sections of the ordinances of the city of Denver.

This case comes to this court upon appeal from the district court of Arapahoe county.

The complaint alleges: That the plaintiff has a license, issued by the fire and police board of the city of Denver, to carry on a saloon business at 1761 Champa street, Denver, Colorado; that the saloon has been fitted up at great expense, consisting of show cases, bars, glass ware, tables, chairs, mirrors, ice boxes, pumps and other appliances for the conduct of the saloon business; that in said saloon he carries a large stock of wines, ales, beers, whiskeys and other liquors; that he has been engaged in the saloon business at said place for more than nine years; that he has invested a large sum of money in said improvements, fixtures, furniture, stock of liquors, etc.; that in the conduct of said business he has derived enough profits therefrom to support himself and family; that connected with the main bar room are two or three smaller rooms from a hallway, and which hallway leads to an outer hallway or door opening on
114 Eighteenth street; that these rooms are used for the purpose in part as a storeroom and in part for serving drinks to customers and patrons of the plaintiff's business; that all of these rooms are included in one large room, which is divided off as aforesaid, the partitions extending toward but not reaching the ceiling; that in the conduct and management of his business the plaintiff has served beer, whiskey and other drinks to women the same as men in the bar and other rooms mentioned, and that a portion of the profits derived from the business arises from the sales to women; that these sales are made between the hours of five o'clock a. m. and twelve o'clock midnight, and not on Sundays; that the place has been maintained in an orderly manner, and women have not been allowed to become intoxicated on the premises, nor to enter therein when intoxicated; that sections 745 and 746 of ordinance No. 101 of the series of 1898 of the city of Denver provide that every saloon keeper who shall keep in connection with or as part of such liquor saloon any wine room, either with or without door or doors, in which any female person shall be permitted to enter from the outside, or through such liquor saloon, and there be supplied with liquor, shall, upon conviction, be fined, and that no saloon keeper shall permit any female person to be or remain in any liquor saloon or tippling house for the purpose of there being supplied with any kind of liquor whatsoever, nor shall any female person be allowed in any place adjacent to a saloon where intoxicating or malt liquors are sold or given away, nor shall she be allowed to wait or attend on

any person in any such place; that said ordinances are illegal and void, and contrary to the provisions of the constitution- of
115 the United States and State of Colorado and the law of the State of Colorado; that on the 22d day of May, 1901, the chief of police, acting under the directions of the fire and police board, caused the plaintiff to be arrested, charged with violation of said sections of said ordinance, and on the 23d day of May, 1901, the police magistrate found the plaintiff guilty of a violation of said ordinance and fined him $50 and costs; that the fire and police board have instructed the chief of police and other police officers to keep watch on plaintiff's premises, and in case any woman enters to arrest the plaintiff and any and all such women found or being therein, and that the said fire and police board and chief of police threaten and state that they will arrest the plaintiff as often as any woman is found in or upon the premises. and will cause him to be fined a like or greater amount for each offense, and threaten to station police officers at the entrance of plaintiff's said premises and to arrest said plaintiff whenever any woman enters said premises; that the conduct of the said police officers and fire and police board have in a large measure destroyed plaintiff's business by deterring both men and women from entering said place on account of said officers being at or near said place, and if persisted in will absolutely destroy and render valueless the said business and property of the plaintiff; that if the plaintiff is arrested from time to time for alleged violations of the ordinance he will be unable to pay the fines which will be assessed against him, and in default he will be imprisoned in the jail of said city of Denver and be deprived of the opportunity of carrying on his business, and thereby his busi-
116 ness will be absolutely destroyed, and plaintiff will also be deprived of his liberty, contrary to the law of the land and without due process of law.

A temporary injunction was issued, restraining the fire and police board and chief of police from interfering with plaintiff's business, and from arresting the plaintiff on any charge made against him for the violation of said sections 745 and 746, and from stationing or maintaining police officers at or near the plaintiff's premises for the purpose of compelling the observance of said sections.

The contention made by plaintiff's counsel is that the proprietor of a saloon has as much right to sell whiskeys and other beverages to women and to allow them within his place of business, whether in the saloon proper or the rooms adjacent thereto, as men. That any ordinance or law which undertakes to or does prohibit a saloon keeper from thus carrying on his business is illegal and void, as being contrary to the provisions of the constitution- of the United States and State of Colorado and of the law of the State of Colorado; that in the conduct of plaintiff's business he has been able to support his family by reason of the fact that he has been in the habit of selling liquors to women, and that to prohibit him from so doing, to station officers at or near his place of business and to arrest him when a woman enters the premises, as the fire and police board and chief of

police have threatened to do, means an absolute destruction of his business.

On the other hand, counsel for the defendants say that the ordinances are legal, and that a court of equity has no right to
117 enjoin the enforcement of an ordinance or prevent the prosecution of a saloon keeper for a violation thereof.

There is no question raised in this case as to the sale of liquors within the prohibited hours mentioned in the ordinances or on the Sabbath day.

The plaintiff simply desires to sell liquor to women the same as men during the hours which, by the ordinance, he is allowed to sell to men.

A motion to dissolve the injunction was filed and, likewise, a demurrer to the bill. The demurrer was overruled and the motion to dissolve denied. The appellants elected to stand upon their demurrer and judgment, making the injunction in a modified form perpetual, was entered. It is contended by the appellants that in this particular case a decision by this court as to the right to an injunction will itself decide the case on the theory that an injunction is not a proper remedy under any circumstances. Our position is that an injunction is a proper remedy, as we shall hereinafter show. The question as to the right of the plaintiff to sell liquor to women is involved in case No. 4389, and must there be decided on the merits. Therefore, the court might properly forego the decision of the question of whether or not an injunction is or is not a proper remedy.

In their brief the appellants have discussed the questions in the order, first, whether or not an injunction is a proper remedy to prevent the destruction of one's property and business by the fire and police board and chief of police, and second, whether or not a saloon keeper has the right, under the law, to sell liquor to women the same as to men. This is putting the cart before the horse in the consideration of the subject.

118 It is but proper to say at this point that the argument of appellants upon the second proposition is not their own. They have simply taken the opinion of Judge Ben B. Lindsey of the county court in case No. 4389, rearranged the pronouns and printed it as their own brief. Nowhere is credit given to Judge Lindsey.

Injunction is a Proper Remedy.

The allegations of the bill stand admitted and must be considered as proven. The question becomes practically this: Assuming that in Colorado, under the constitutions of the United States and of the State of Colorado and laws of the State, a saloon keeper may sell liquor to women the same as to men, and that sections 745 and 746 of the ordinances of the city of Denver are illegal and void, and that the fire and police board were impairing and destroying a valuable business and property right and invading a civil right without due

process of law, were prohibiting the sale of liquor to women, were cutting down the receipts of the appellee and preventing him from earning a livelihood, can a court of equity, under these circumstances, interfere to prevent the destruction of said property and business by restraining the fire and police board? We shall endeavor to show in a later part of this brief that every assumption above made follows from the admissions in this record by reason of filing the demurrer or as legal conclusions. The appellants do not dispute this proposition in their argument. The appellants have entirely misunderstood the scope of this case. Their position
119 has no application whatever to the case at bar. It is that an injunction is not a proper remedy to prevent a criminal prosecution, even though it would prevent a multiplicity of suits, and particularly in a case where the question is the same at law as in equity. That is not the question to be here decided. The question is, Can the fire and police board of the city of Denver, under the Constitution and law of the land, destroy the plaintiff's business, station police officers in and about his premises, arrest his patrons, deprive him of his means of earning a livelihood, cut down his sales of liquor, destroy his property rights and interfere with his civil rights? If it can not do all that, then has not equity jurisdiction to restrain it from attempting so to do where there is no adequate remedy at law? The question of whether or not the fire and police board has a right to do this depends largely upon the validity of certain ordinances which prohibit a saloon keeper from selling liquor to women the same as to men. If, therefore, these ordinances are unconstitutional and void, if the fire and police board has no right to interfere with and destroy a man's property, if there is no cause of action for damages against the fire and police board or against the city of Denver for such illegal action, if there is no speedy, adequate, plain or any other remedy at law, because during the period and delay incident to an appeal to the county court and then to the supreme court the business would be destroyed, has not equity jurisdiction?

The following statements may assist to show clearly just what the questions in this case are.

First. The question is NOT whether a court of equity will
120 restrain a criminal prosecution even where property rights are destroyed or impaired, or a civil right invaded. Yet, the better reasoned authorities all hold that where civil rights are invaded and property rights destroyed by a criminal prosecution, equity will then interfere.

Second. The question certainly is NOT whether a court of equity will restrain the prosecution of a criminal offense or a suit for debt under an ordinance on the ground of multiplicity of suits *merely*.

Third. Nor is the question whether a court of equity will restrain a criminal prosecution or a civil prosecution for debt under an ordinance on the ground of illegality *alone*.

Fourth. The question is, Can the fire and police board, under the guise of enforcing an ordinance which is illegal and void, destroy

the property and business of appellee and invade his civil rights by arresting him and his patrons and prosecuting them in a tribunal where the proceeding is an action for debt?

A full understanding of the differences in the propositions above stated make plain the distinctions which we have drawn by the authorities as to when and when not equity will interfere.

Prosecution under Ordinance a Civil Action.

At the outset we must draw the distinction between a prosecution under a statute for a criminal offense and a prosecution under an ordinance. In this State the proceedings under an ordinance are not criminal but civil. They are proceedings for the collec-
121 tion of a debt, and the complaint in the police magistrate court is so labeled or marked.

City of Durango *vs.* Reinsberg, 16 Colo., 327.
Hughes *vs.* People, 8 Colo., 539.
City of Greeley *vs.* Hamman, 12 Colo., 97.
City of Oshkosh *vs.* Schwartz, 55 Wis., 487.
Ex parte Hollwedell, 74 Mo., 395.

The supreme court of Missouri has stated this principle in the following language:

"Nor do we regard the violation of the ordinance under consideration as a *crime*, since 'a crime * * * is an act committed in violation of *a public law*;' 4 Black. Com., 5; a law co-extensive with the boundaries of the State which enacts it. Such a definition is obviously incapable to a mere local law or ordinance, passed in pursuance of, and in subordination to, the general or public law, * * * and enforced by the collection of a pecuniary penalty. * * * In The City of Goshen *vs.* Croxton, 34 Ind., 239, it was held that though a suit before the mayor to recover a penalty for violation of a city ordinance was instituted by the issuance of a warrant and the arrest of the defendant, yet that such a procedure was but a *civil suit*."

City of Kansas *vs.* Clark, 68 Mo., 589–590.

122 Being a civil action and the judgment a fine—a money judgment—the same rules do not necessarily obtain as in a purely criminal proceeding, nor is there any reason for the application of the same rules. The administration of the criminal laws of the State should not be interfered with; but the ordinances of the city of Denver do not pertain to the administration of any criminal law. They do not give, nor could they give, the police magistrate court jurisdiction of criminal cases. They are merely municipal rules and regulations.

We concede the law to be that a purely criminal prosecution unattended by a destruction of property or the invasion of civil rights will not be restrained by a court of equity. We may also concede

that a proceeding under an ordinance before a police magistrate for a mere disobedience of the ordinance, unattended by any destruction of property rights, would not be restrained by a court of equity. The attention of the court, however, is called to the fact that we are not asking merely to have a prosecution restrained. We are asking to have the fire and police board restrained from arresting us and stationing police officers upon our premises, and to prevent the destruction of our property. We believe that this is an important distinction, to be borne in mind by this court, because it shows clearly that under the scope of this injunction no criminal proceeding of any kind or character is being interfered with, and because it shows clearly that the injunction goes to the restraining of the destruction of our property and business, and the invasion of our civil rights, and the taking from us of our money without due
123 process of law. The prosecution by the fire and police board, if it resulted in a conviction, would simply mean a fine, and thereby affect our property—not our liberty.

There are many cases holding that where there is a destruction of property rights, or the invasion of civil rights, an injunction will stay a criminal prosecution where there is no adequate remedy at law by the restitution of the property, or where there is no way of determining the amount of the damages.

Schandler Co. *vs.* Welch, 42 Fed., 563.
Sheridan *vs.* Colvin, 78 Ill., 237.
Spinning Co. *vs.* Riley, L. W., 6 Eq., 558.

We submit that there would be no way of restoring this saloon business if it was allowed to be destroyed by the fire and police board.

The city is not liable for damages in such a case; and even if it were, the damages could not be measured.

In the case of Port of Mobile *vs.* Nashville R. R. Co., 84 Ala., 115–126, it is said:

"The mere fact that an act is criminal does not divest the jurisdiction of equity to prevent it by injunction, if it be also a violation of property rights, and the party aggrieved has no other adequate remedy for the prevention of irreparable injury which will result from the failure or inability of a court of law to redress such rights."

124 In the case of City of Atlanta *vs.* Gate City Gas Light Co., 71 Ga., 126, it is said:

"That injunction was the proper remedy to restrain the defendants from interfering with and hindering the prosecution of the complainant's work under its charter, is evident, both upon principle and authority. While a court of equity will not interfere by an injunction with the prosecution of a criminal proceeding, yet, where it is evident that private property and *civil rights* are invaded by such means, equity will interfere to protect them. If the charge be of a criminal nature, or offence against the public, and does not touch the enjoyment of property, then a court of equity should not inter-

pose by injunction. On the other hand, where it is manifest, as in this case, that a prosecution and arrest is threatened for an alleged violation of city ordinances for the sole purpose of preventing the exercise of civil rights conferred directly by law, injunction is the proper remedy to prevent injury to the party thus menaced. 33 Ga., 601.

"A court of equity," says Kerr (Injunctions 2), "has no jurisdiction in matters merely criminal or merely immoral, which do not affect any right of property. If a charge be of a criminal nature, or of an offence against the public peace, and does not touch the enjoyment of property, jurisdiction can not be entertained. * * * But if an act which is also criminal touches also the enjoy-
125 ment of property, the court has jurisdiction, but its interference is founded solely on the ground of injury to property." Many cases and elementary writers might be cited to sustain that distinction here laid down."

To prevent the invasion of *civil rights* is as much the province of a court of equity as to prevent the destruction of private property. See

City of Austin *vs.* Cemetery Association, 87 Texas, 336.

It is evident then that there must be a distinction drawn, as shown by these authorities, where equity simply attempts to prevent a criminal prosecution from proceeding, and where equity attempts to prevent the destruction of property or the invasion of civil rights by reason of the contemplated criminal proceeding. In support thereof we cite:

Mayor, etc., of Baltimore *vs.* Radecke, 49 Md., 226.
Coal Co. *vs.* City of St. Louis, 130 Mo., 330.
Wood *vs.* City of Brooklyn, 14 Barb., 433.
Platte, etc., Co. *vs.* Lee, 2 Colo. App., 192.
City of Austin *vs.* Cemetery Association, 87 Texas, 330.

Mr. Justice Field, in the case of *In re* Sawyer, 124 U. S., 410, aptly expresses it as follows:

"The proceedings before the common council were not
126 criminal in the sense to which the principle applies. That body was not a court of justice, administering criminal law; and it is only to criminal proceedings in such a tribunal that the authorities cited have reference. In many cases proceedings, criminal in their character, taken by individuals or organized bodies of men, *tending, if carried out, to despoil one* of *his property* or *other rights*, may be enjoined by a court of equity."

In the case of City Council of Montgomery *vs.* Louisville & Nashville R. R. Co., 84 Alabama, 132, the court says:

"The ordinance is penal in its nature, we may say highly penal, in view of the daily recurring fines for the continuance of the *quasi* nuisance intended to be prohibited and punished. It must, therefore, be strictly construed against the municipal authorities. It is not sufficient for an act to be brought within the spirit of a highly

penal statute; it must come within the letter, ordinarily, to authorize its inclusion within the terms of such statute. Adopting such a construction, we think that the act of the complainant corporation *does not fall within the terms of the ordinance, and is not violative of its provisions.* This conclusion is sufficient to authorize us to hold that the chancellor did not err in refusing to dissolve the injunction granted to prevent the threatened enforcement of the ordinance against the complainants, or its authorized agents."

127 In the case of City of Austin *vs.* Cemetery Association, 87 Texas, 336, it is said:

"Here the appellee seeks to enjoin the City of Austin from enforcing an ordinance which it claims to be void, and says, that if the enforcement is not restrained it will result in an irreparable injury. In behalf of the city it is answered, that if the ordinance be invalid there exists a plain, adequate and complete remedy at law. It is true that if the ordinance be void anyone prosecuted under its provisions may have it so declared, either in the original criminal action or by suing out a writ of *habeas corpus.* Notwithstanding this fact, it is clear to us, without the statement of the conclusion by the court of civil appeals, that the effect of the ordinance is such that if its enforcement is not restrained it may result in a total destruction of the value of appellee's property for the purpose for which it was acquired. * * * But to deny a remedy in a court of equity in the case first supposed, or in the present case analogous to it, would be, we think, to disregard the fundamental principle upon which such courts are established."

The above case is authority for the proposition that there is no adequate remedy at law, and that irreparable injury will occur to the appellee.

128 A particularly good statement of the law relating to powers of courts of equity in cases for the prosecution of a mere violation of an ordinance, and in cases where the prosecution for the violation of an ordinance results in destruction of private property or the invasion of civil rights, is contained in 35 American State Reports, on pages 678–679.

The case of Davis *et al. vs.* Fasig, 128 Ind., 271, was an action against the mayor, marshal and chief of police of the city of Terre Haute to enjoin them from hearing, determining or prosecuting any action to recover penalties under an ordinance of the city requiring saloons to be closed from 11 o'clock p. m. till 5 o'clock a. m., and on Sundays, election days and holidays. The court held that a court of equity may enjoin the enforcement of a void city ordinance in order to prevent a *multiplicity of actions or at the instance of any person whose interests are to be injuriously affected thereby.*

In the case of Wood *vs.* City of Brooklyn, the Mayor and Chief of Police, 14 Barb., 425, it was held that an injunction would be granted to prevent the enforcement of an ordinance prohibiting the sale of spirituous liquors on Sunday, when the ordinance was void, and that the determination of whether the ordinance was void was properly determined in the equity suit.

"A city may be enjoined from prosecuting a property owner for violating an ordinance, when such prosecution tends to impair vested rights in the property, or by reason of a multiplicity of suits inflicts irreparable injury without authority of law."

Platte, etc., Co. *vs.* Lee, 2 Colo. Ct. App., 185.

129 Now, great reliance is placed by the appellants' counsel upon the case of Beede *vs.* City of Denver, 25 Colo., 172. They state that in the Beede case this court "has fully considered the matters herein involved." Just before that they stated that the questions involved were that courts of equity will not by injunction restrain a prosecution at law when the question is the same at law as in equity, and that an injunction will not issue to restrain a prosecution for a violation of a city ordinance on the ground that the ordinance is invalid or to prevent a multiplicity of suits.

Perhaps they are correct when they say that the Beede case has considered those questions. The distinction which we have drawn between the points involved in this case, as they have stated them, and as to what we claimed, show- the distinction between the Beede case and this case.

The Beede case is not authority for the proposition that the fire and police board cannot *at all* be restrained from arresting a party for a violation of an illegal ordinance. On the contrary, it is authority that under certain circumstances a board will be enjoined, as is seen from the following words of that opinion:

"It follows that the averments in the bill of appellee that the ordinance of which he complains is invalid, is not, of itself, sufficient to entitle him to the relief granted by the lower court."

More must have been alleged than was alleged in the Beede case.

We did allege more. The very language of the opinion itself
130 confines the rules of law enunciated to the facts of the particular case as pleaded. It assumes that the pleadings show that the principal question in the case was the prevention of a prosecution for a violation of an ordinance *only*. True it is that the question of irreparable damage is considered, but it is only considered in the light of such irreparable damage as would flow from the *prosecution* only under the ordinance, and not from any invasion or destruction of property or civil rights. In other words, there were no facts set out in the bill of complaint in that case, as shown from the language in the opinion, to indicate that there was a destruction or invasion of any civil or property right.

And again the court says:

"There are cases in which a municipality will be restrained in equity from the enforcement of its ordinances, but an examination of the carefully considered cases on this subject leads us to the conclusion that the weight of authority is that the interposition of a court of equity can only be invoked in such cases clearly within the well-recognized equitable rule above announced; and assuming, but not deciding, that, according to the averments of the bill, the ordinance in question is illegal, the other elements necessary to

entitle appellee to an injunction in this case are absent, and the demurrer to the bill should have been sustained."

We call attention to the following part of this quotation:

131 "*A court of equity can only be invoked in such cases clearly within the well-recognized equitable rule above announced.*" We find that rule, beginning on page 173:

"The fundamental doctrine upon which the power of a court of equity rests is, that it proceeds only when there is no plain, adequate and complete remedy in the law courts of which the party invoking its aid can avail himself."

This is an admission that the fire and police board can be restrained, under certain circumstances, and it lies with us, then to show that the allegations of our bill make plain that we have no plain, adequate and complete remedy in the law courts, which we will hereafter proceed to do. The reasoning in this case does not decide adversely to the case at bar. It is true that it approves the proposition that a court of equity will not restrain a prosecution at law when the question is the same at law as in equity. We have not disputed that proposition. The inference is that the court below considered that there was no question of property rights involved in the Beede case. The Beede case is also authority for the proposition that mere multiplicity of suits is not ground for injunction. We may admit that, but it does not touch our case. The very language of this case shows that the learned judge decided it upon one proposition, and that was that it was squarely and fairly a suit to prevent a prosecution under a municipal ordinance on account of the invalidity of the ordinance alone, and that nothing else was involved; that no property rights were destroyed or impaired, or any civil rights invaded, and this is what the court says:

132 "The object of ordinances, imposing penalties for specific acts, is to protect and preserve the peace and good order of the corporate community, as criminal proceedings are intended for the preservation of the peace and dignity of the State; and if every offender against such ordinances could invoke the interposition of a court of equity against their enforcement, by charging illegality, or by multiplying his offenses, municipal authorities would be paralyzed in discharging the public duties intrusted to them. This is clearly an attempt to extend the writ of injunction beyond its scope and intent, and, through this process, prevent the city from invoking the aid of competent tribunals to enforce this ordinance in the usual way."

If that was the object of the Beede case the supreme court was right, but such is not the object of this case. We are not attempting to prevent simply a prosecution under an illegal ordinance on the ground of its invalidity, or that there will be a multiplicity of suits. We say that our property is being destroyed and that we have a right to enjoin the executive officers of the city from destroying it. The learned judge who wrote that opinion was careful to limit his language to the particular case. He did so in a number of instances,

and in stating the principles he stated them with limitations. In one instance he says:

"It follows that the averment in the bill of appellee, that
133 the ordinance of which he complains is invalid, is not, of itself, sufficient to entitle him to the relief granted by the lower court."

In another place he says that elements necessary to entitle the appellee to relief were absent. That was right. But that decision recognizes the rule that where property rights *are* destroyed or impaired, and civil rights invaded, that a court of equity will interfere.

It follows from this language that the decision of the court in the Beede case is confined to the statement of the rules applicable in a case where the bill did not present the destruction or invasion of property or civil rights, but related simply to a prosecution for a violation of an ordinance. If there be no destruction or invasion of property or civil rights follows for a violation of an ordinance, no question of destruction or invasion, of property or civil rights follows unless the averments in the bill show that such is the case; therefore, in an action at law to recover the penalty, the question of the validity of the ordinance may be fully determined, but in the other case, where the invasion of civil rights or the destruction of property or business is pleaded and set out, the court of law hasn't power to give full and adequate relief, and the court of equity will assume jurisdiction.

We desire to distinguish the principles involved in this case from those cited by the appellants in their brief and argument. Beginning on the bottom of page 5, they say:

"We take it to be a well-established rule that a court of
134 equity will not, by injunction, restrain a prosecution at law, when the question is the same at law as in equity, and that an injunction will not issue or restrain a prosecution for a violation of a city ordinance on the ground that the ordinance is invalid, or on the ground of irreparable injury, or to prevent a multiplicity of suits."

For the purposes of this argument we might concede that to be a correct statement of the law, and then it has no application to this case. The first point made is, that you can not "restrain a prosecution at law when the question is the same at law as in equity." That contemplates a prosecution at law, unaccompanied by any other matters. For example, when prosecuting a suit in ejectment you can not stay it by a suit in equity when the questions are identically the same. The next question involved in the statement of counsel is that an injunction will not issue to restrain a prosecution for a violation of a city ordinance on the ground that the ordinance is invalid. That is not our case at all. Our case goes further. Our case says that they are destroying our property and invading our civil rights. We are not seeking to have the police magistrate court restrained from prosecuting us for a violation of the city ordinance simply on the ground that it is invalid. We are asking that the fire and police board be restrained from proceeding against us

under an illegal ordinance where that procedure results in the destruction of our property or the invasion of our civil rights. If it was a mere question of a prosecution for a violation of a city ordinance on the ground of its invalidity we might be able to test that validity in a court of law, but coupled with it is the invasion
135 of civil rights and the destruction of property rights which the courts will protect.

Neither is our case alone to prevent a multiplicity of suits, but accompanying it is the destruction of property rights and the invasion of civil rights. Were the question simply one of a multiplicity of suits we might lie by until the first one had been determined. Such would be the case were that the only result, but the difficulty is that, while the suits are going on, our property will be destroyed, and when they were finally determined we would have nothing left. That is a distinction which the court should bear in mind in reading and considering all these cases. Those are the distinctions which the learned justice who wrote the decision in the Beede case, 25 Colo., 172, had in mind.

None of the authorities cited on pages 8, 9 and 10 of Appellants' Brief touch the question actually involved in this case. They go off simply on the proposition that a court of equity will not restrain a prosecution because of the invalidity, and that alone, of the ordinance, or upon the ground that equity will not interfere to prevent a multiplicity of suits alone. They are not all agreed, even, upon these propositions. Brown *vs.* Cattlettsburg, 11 Bush. (Ky.), 435, holds directly that equity will interfere to prevent a multiplicity of suits or to prevent irreparable injury. Dodge *vs.* Council Bluffs, 57 Iowa, 560, recognized the doctrine that where property rights are destroyed and civil rights are invaded equity will interfere, and the cases cited upon that proposition do not sustain any point made by the appellants. Schwab *vs.* Madison, 49 Ind., 329, was a case
136 where there had been a fine imposed by the mayor. An appeal was allowed by the statutes from the mayor's decision. After the mayor had imposed a fine defendant attempted to enjoin its collection. The case holds that that could not be done. It has no bearing whatever upon any question involved in the case at bar. Yates *vs.* Batavia, 79 Ill., 500, determines simply the legality of an ordinance, and no other question, as appears from the following:

"Suits having been commenced against each of complainants for a violation of the provisions of a village ordinance * * * this bill was filed to enjoin the further prosecution of the suits, and to settle the legality of the ordinance." Des Plaines *vs.* Poyer, 123 Ill., 348, was not an injunction case at all. It is an authority on another proposition involved in this case, viz., that laws and ordinances must apply to all, and not to a class. Garrison *vs.* Atlanta, 68 Ga., 64, decided that an injunction would not be granted to restrain a criminal proceeding under an ordinance. No property right was involved. It appears that in the State of Georgia, where the ordinances provided for a fine or imprisonment, the courts have held that the proceedings were criminal proceedings. It has no ap-

plication here. Machine Co. *vs.* Fletcher, 44 Ark., 139, simply holds that a criminal prosecution will not be prevented by an injunction. Waters-Pierce Oil Co. *vs.* Little Rock, 39 Ark., 412, holds that courts of chancery have no jurisdiction to enjoin a criminal prosecution, but it also says that the sheriff may be restrained from destroying and selling property for the non-payment of a license tax. In other words, the authority supports our contention that where a property right is involved equity will interfere.

137 West *vs.* Mayor, 10 Paige (N. Y.), 539, has no application. The court says:

"I am not aware of any case in which this court has sustained such a bill, to prevent the defendant from suing at law, where the rights of the parties depended upon a question of law merely."

It is readily distinguishable from the case at bar because there was no question of the destruction of property rights or the invasion of civil rights involved.

Church *vs.* Washington, 109 N. C., 21, is a case where an injunction was not granted where the action only seeks to have an ordinance adjudged void. It has no application to the questions here involved. Davis *vs.* American Society, 75 N. Y., 362, was an action to prevent proceedings under a criminal statute of the State and not under an ordinance for a debt. Kansas City, etc., R. Co. *vs.* Kansas City, 29 Mo. App., 89, is a case where the questions here presented were not present. It comes squarely within the rule that a court of equity will not restrain the enforcement of an ordinance simply because of the fact that there will be a multiplicity of suits. The question was raised on an attempt on the part of the railroad company to restrain the city from compelling it to keep a watchman at a certain railroad crossing, and the court says:

"I am free to admit that I can conceive of a state of affairs growing out of an attempt to enforce a vicious and invalid ordi-
138 nance against such a corporation which would be so destructive of the property rights of the corporation, under its franchise, as ought to invoke the extraordinary powers of a court of equity for the preservation of its property and its corporate life. * * * At all events, we do not perceive such emergency in the situation as would justify us in breaking through the better established doctrine of non-interference as a court of equity with the administration of a penal statute in the courts of criminal jurisdiction."

Upon reading that case in its entirety we are satisfied that this court will conclude that it recognizes the doctrine which we invoke.

Hottinger *vs.* New Orleans, 42 La. Ann., 629, is a case where plaintiff attempted to enjoin simply on the ground that the ordinance was unconstitutional and the court said that where that question only was involved equity would not interfere. City of Bainbridge *vs.* Reynolds, 4 Municipal Corporation Cases, 584, cited by counsel, is a case where there was an attempt to collect a special laundry license of $100.00. There were no allegations of any other acts or destruction of business, or invasion of civil rights, but simply the determi-

nation of the question of whether the ordinance was void or legal, and the court held that equity would not determine that question.

Such are the authorities cited by the appellants in their brief in support of the contention that this injunction should not stand. The distinctions which we have pointed out as existing in this class of cases are readily seen to run through the cases cited.

139 All the appellants' authorities go off on the proposition that where an attempt is made to restrain a prosecution simply to prevent a multiplicity of suits, or simply to prevent the prosecution alone, that equity will not interfere. Not one of them decides that where property rights are destroyed or impaired and civil rights invaded that the executive branch of the government will not be prohibited from posting its men in and about the premises of the appellee to intimidate his patrons, to intimidate him, and to arrest people who might go upon the premises who had a lawful right there. Even the provisions of the ordinance do not extend that far. We maintain that if our showing is sufficient that property rights are involved, civil rights invaded, and our business impaired or destroyed, and if we show we have no adequate remedy at law, we are entitled to the injunction. But before considering the allegations and the injunction in this case, we desire that the court bear in mind that the district court of Arapahoe county, Colorado, is a court with equity powers and equity jurisdiction as well as law, and that the code procedure has simplified matters so that upon a plain statement of the facts, whether the case is in equity or at law, the court may grant the relief demanded if it is proper.

The supreme court of Missouri, in the case of Coal Co. *vs.* City of St. Louis, 130 Mo., 329, says:

"While under the former system of jurisprudence, in which relief in equity was administered by a different tribunal and by a different procedure from those that gave relief at law, courts of equity have sometimes refused to interfere before the right was established at law, there seems no good reason, under the present system
140 in code States where both are blended, why such relief should not be granted in the first instance by injunction."

Section 143 of the Code provides that an injunction may be granted in the following cases:

"First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or some part thereof, consists in restraining the commission or continuance of the act complained of, during the pendency of the litigation, or for a limited period, or perpetually.

"Second. When it shall appear by the complaint or affidavit that the commission or continuance of some act would produce great or irreparable injury during the litigation. * * * "

Great injury is sufficient for an injunction. There need not be absolute destruction of plaintiff's rights or his property to entitle him to an injunction, although the plaintiff (appellee) in this case shows that there would be practically a destruction of his business

and property if the orders of the fire and police board were allowed to be enforced.

It is not necessary that the injury shall have been sustained. It is sufficient if it is impending and likely to occur. This learned court, in the case of Crisman *vs.* Heiderer, 5 Colo., 594, says:

"It is not essential to the granting of equitable relief that
141 irreparable injury shall already have resulted from the acts complained of; it is only required that the damage is threatening or impending, and that a clear necessity be shown for affording immediate protection to some right or interest which would otherwise be seriously injured or impaired."

And again, this learned court, in the Beede case, *supra*, lays down the rule as follows:

"In order to constitute irreparable injury within the meaning of the law, the threatening of which would justify a court of equity in exercising its extraordinary power of injunction, it must clearly appear not only that the wronged party could not be compensated in damages therefor, but also that the injury would follow if the court did not so interpose."

From these authorities and this reasoning it is apparent that if the plaintiff had stood by and not obtained an injunction and had allowed the fire and police board to station its officers around his place of business and suffered himself to be arrested and his patrons to be arrested, and his business broken up, he would not have had an adequate remedy at law; that he would have suffered great and irreparable injury, and that his property rights and his civil rights would be involved, and that, therefore, a court of equity would assume jurisdiction.

142 Had the plaintiff below an adequate and complete remedy at law?

If, by reason of the acts of the fire and police board Cronin's business was destroyed, or if it was so damaged that it would not afford him a livelihood for himself and family by reason of the fact that the stationing of policemen in and about his premises, thereby driving away trade, and the arresting of patrons as they come to his place was indulged in, surely he would have no adequate remedy at law. If he were obliged to wait until an appeal from the police court could be heard, and in the meantime was prohibited from selling to women, and his patrons were arrested and driven from the place, he would have no adequate remedy at law. He would not even have a case for damages against the city, because the law stands in the way of a recovery; and if he had the right to recover, it would be a hard matter to measure the damages.

The question of when there is an adequate remedy at law is well stated in the case of Coal Company *vs.* City of St. Louis, 130 Mo., 328, as follows:

"But is the remedy at law adequate? It must be remembered that the injury complained of here is continuous. The ordinances are continuous, and plaintiffs' business is continuous, and, under the

ordinances, for each wagon load of coal sold and delivered in violation of the restrictive provisions thereof the plaintiffs each become subject to an action in the municipal courts of the city
143 for such violation. The fact that in each of such suits the plaintiffs might plead successfully the invalidity of the ordinances as a defense thereto, does not give them an adequate remedy. They are entitled to be protected from the expense, vexation and annoyance of such a multiplicity of suits in consequence of their continuance of a legitimate business, except upon compliance with the condition of ordinances which it is alleged are and may be utterly void."

In the case of Schandler Bottling Co. *vs.* Welch, 42 Fed., 565, it is said:

"The declared object and purpose of the respondents is to obstruct and prevent the right of complainant and its agents to pursue a lawful avocation and business in commerce between the States. In short, in intent and in effect, to destroy complainant's said business, and expel his property, imported into the State for mercantile purposes, from the State. Certainly such condition of affairs call- into activity the equity powers of the court to protect the property rights of the complainant, secured to him by the Constitution of the United States."

It is contended that the plaintiff might submit to arrest of himself and servants and employés, and raise the question of whether or not the ordinance is valid upon the trial in the police court. The bill alleges that this would occur frequently. This court
144 will take judicial notice that two or three years would elapse before a case brought in the police court for a violation of an ordinance would finally be heard in an appellate court and determined. During that period the plaintiff would be absolutely powerless and helpless. He might submit to arrest each and every day and have numerous suits depending against him with an unlimited amount of fines piled up against him, thereby swamping the plaintiff in his business. The intimidation of his patrons would surely work a destruction of his business before the suits could be determined in the appellate courts. And were there an action for damages at law for said arrest and destruction of business there is no manner in which the actual damages may be measured for such an arrest for the alleged violation.

The fact that there could be an appeal from the police magistrate court to the county court, and an appeal from that court to the supreme court does not make the remedy adequate.

McInerney *vs.* City of Denver, 17 Colo., 302.
Bruner *vs.* Sup. Ct. of San Francisco, 92 Cal., 239.

The law is well settled that neither the city nor the fire and police board, nor the members thereof, are responsible for damages for arrest under an ordinance. The rule applicable to such a proposition is well stated in 19 American and Eng. Enc. of Law, page 514, as follows:

"Neither the Federal nor the State governments are liable
145 for the unauthorized torts of their officers, and municipal corporations are entitled to the same exemption when they act in a *governmental* or *political* capacity.

"This is an action for damages occasioned by the arrest and false imprisonment of plaintiff, by the officers of The Town of Columbia, defendant. * * * And that the marshal, under color of his office, compelled the plaintiff to go with him to the office of the recorder, and by virtue of a pretended *mittimus* issued by said recorder, and with the authority of respondent, did imprison the appellant, by reason of which he was deprived of his liberty. * * * Plaintiff was arrested * * * upon a warrant issued by the recorder of said town upon the charge of having exercised the trade and business of an auctioneer within the corporate limits of said town without first obtaining a license as required by the town ordinance."

And it was held that a municipal corporation is not liable for a trespass committed by its officers in the enforcement of a void ordinance.

Worley *vs.* Town of Columbia, 88 Mo., 106.

To the same effect is the case of Trammel *vs.* Town of Russellville, 34 Ark., 105. The same rule applies to municipal officers and to the fire and police board. Trammel *vs.* Town of Russellville, *supra*,
was an action against the town, mayor and marshal for dam-
146 ages on account of an arrest under an ordinance, and the court held that neither the town nor the mayor or marshal were liable either for the act of the mayor in issuing the warrant of arrest for its violation, or for that of the marshal in arresting the offender under it, and quoted from Cooley on Torts, 408, as follows:

"Whenever the State confers judicial powers upon an individual, it confers them with full immunity from private suit. In effect, the State says to the officer that those duties are confided to his judgment; that he is to exercise his judgment, fully, freely, and without favor, and he may exercise it without fear; that the duties concern individuals, but they concern more especially the welfare of the State, and the peace and happiness of society; that if he shall fail in a faithful discharge of them he shall be called to account as a criminal, but that in order that he may not be annoyed, disturbed and impeded in the performance of those high functions; a dissatisfied individual shall not be suffered to call in question his official action in a suit for damages. That is what the State, speaking by the mouth of the common law, says to the judicial officer."

It follows that no action for damages could be maintained by the plaintiff against the city for an illegal arrest or destruction of property by the fire and police board, or the chief of police. Neither can there be an action against the members of the fire and police board or chief of police individually, or as a board.

147 The officer is not liable for an action for his conduct in a governmental or political capacity.

19 Am. and Eng. Enc. of Law, 484.

In the case of Trammel *vs.* City of Russellville, *supra*, it is said:

"Did the warrants protect the marshal and his deputy in making the arrest? It is established doctrine that process, fair on its face, will protect from liability the officer executing it."

To the same effect is Walsh *vs.* Trustees of the New York and Brooklyn Bridge, 96 New York, page 439.

We desire to call the court's attention to the injunction in this particular case, as the same was made perpetual. It provides that the fire and police board and chief of police be perpetually enjoined and restrained from arresting the plaintiff, or causing the plaintiff to be arrested, under any violations of sections 745 and 746 of ordinance number 101, at 1761 Champa street, and from arresting any woman or women that may be in or upon said premises upon a charge of a violation of said sections, and from interfering with the plantiff's said business at said place. It is not at all an injunction to restrain a criminal prosecution, or even a prosecution under an ordinance. It restrains these executive officers from interfering with his business under pretense of his violation of those two sections. It does not attempt to interfere with the orderly conduct of the affairs of the city.

148 One of the tests by which we may determine whether or not this injunction was properly granted is: Suppose no mention had been made in the complaint of the ordinance, but there had been *straight* allegations that the fire and police board, by acting illegally and wrongfully, were destroying the plaintiff's property, were placing him in a position where his property would be absolutely destroyed, were preventing him from selling liquor to women, were confiscating his property without any warrant or authority in law whatever, and the injunction had been asked for, would this court say that it would not be granted? We apprehend not. And yet the case is parallel with the one at bar, because the proceedings on the part of the fire and police board, in the destruction of this property, was the same as if there was no ordinance, because of the illegality of the ordinance. The determination of the legality of the ordinance simply is an incidental question, and is for the purpose of determining whether or not the action of the fire and police board is or is not legal. The question involved is not the mere question of whether or not the ordinance is valid or invalid. If this court holds that this ordinance is valid, that the fire and police board had the right to make the arrest, then our property will have been preserved to us during the interim, and we will be compelled to obey the orders of the fire and police board. If, on the other hand, it holds that this action of the fire and police board had been improper and that these ordinances are illegal and void, then our property is likewise preserved to us, which it would not have been had the injunction not been granted.

149 Another test is: Suppose a suit had been pending as to who was entitled to the possession of this saloon, and suppose that the party in possession was wasting the supplies and he was worthless financially, the court in the proceeding could well grant

an injunction against waste, and thereby preserve the property until the question of title and possession was finally determined.

So that the result would be that, if the plaintiff could not invoke a court of equity in the premises, and he was obliged to look for redress in the appellate courts on appeal from the police court in a prosecution for a violation of an ordinance, his business would be wholly destroyed, as alleged in this bill and by the demurrer admitted, without any right or redress at all. And it is in just such cases that courts of equity protect the helpless.

May a saloon keeper sell liquor to women in the same manner as to men?

It is apparent that if the fire and police board were acting illegally and without authority, thereby destroying a property and business of much value, injunction will restrain the commission of the illegal acts. That leads to the inquiry of whether the board did act illegally, and whether Cronin might sell liquor on his premises to a woman the same as to a man. The appellants say no; that certain ordinances prohibit it. Appellee says they are illegal and void, as being in contradiction of the Constitutions of the
150 United States and of Colorado, and of the laws of Colorado. Appellants seek to uphold them on the ground that the council, in the exercise of the police power, might pass an ordinance of that character.

The police power, in its broadest acceptation, means the general power of the Government to preserve and promote the public welfare, even at the expense of private rights

18 Am. and Eng. Enc. of Law, 740.
New Orleans Gas Light Co. *vs.* Hart, 40 La. Ann., 474.
4 Blackstone's Com., 162.
Commonwealth *vs.* Alger, 7 Cush. (Mass.), 84.
Stone *vs.* Mississippi, 101 U. S., 814.

Generally speaking, it may be said that the police power is exercised by the legislative department of the Government; that it is limited by constitutional provisions of the United States and other fundamental laws; that it can only be exercised within given rules and for the public good; that rights guaranteed by the Constitution can not be violated; that if it is obnoxious to vested rights and unreasonable, the courts will declare the law void; that it must be exercised so that all are affected by it, and not one class favored and another class imposed upon.

These statements are borne out by the following quotations and citations:

151 "The legislature is clearly the department of the Government which can and does exercise the police power."
Tiedeman's Limitations of Police Power, section 2.

"The police power is limited by the State and Federal Constitutions the same as any other power."
Tiedeman's Limitations of Police Power, section 2.
18 Am. and Eng. Enc. of Law, 742.

"Police power is devoted principally to the care and preservation of the public health and morals, and is commonly exercised in restricting the actions of individuals and in regulating their use of property."

18 Am. and Eng. Enc. of Law, 743.

"Police power can only be exercised by legislative enactment, and it rests solely within legislative discretion to determine when public welfare or safety requires its exercise. Courts are authorized to interfere and declare a statute unconstitutional only when it conflicts with the Constitution; with the wisdom, policy or necessity of such an enactment they have nothing to do. But while such are the legislative functions, there must always be a reason for the exercise of the power, and rights guaranteed by Federal or State Con-
152 stitutions can not be violated by the mere declaration that an occupation or any particular act is injurious to the public welfare. In like manner, although power may be delegated to a municipal corporation to control its internal police, and ordinances or by-laws passed in pursuance thereof have the effect of legislative acts, a municipal corporation is equally prohibited from an arbitrary exercise of police power under the pretense that it is essential to the public welfare."

18 Am. and Eng. Enc. of Law, 746–747.

"The city council can not by an ordinance declaring such acts or property a nuisance make it such. This must be determined by recognized principles, and in cases of doubt it is a matter for the determination of the court."

Yates *vs.* Milwaukee, 10 Wall. (U. S.), 497.

"The preservation of the public morals is an object of scarcely less importance than that of the public health, and laws for this purpose are a very proper exercise of police power."

18 Am. and Eng. Enc. of Law, 750.

"The regulation of the civil rights of individuals is unquestionably a proper subject for the exercise of a State's police power,
153 and laws passed to effect such regulation have been uniformly held constitutional and valid, except in extreme cases. The common instances of its exercise in this respect are seen in statutes intended to secure to all persons, regardless of race or color, equal privileges and accommodations at all places of public entertainment or amusement, such as inns, restaurants and theaters; also laws providing for separate schools for the different races, and separate accommodations by common carriers."

18 Am. and Eng. Enc. of Law, 753–754.

While it will be conceded by everybody familiar with this question that in the exercise of the police power many salutary statutes have been upheld, on the contrary simply because a legislature or

municipal council says a law is enacted to protect the public morals, etc., does not make it so. That is to be determined by well-established rules. Police power is circumscribed by the Federal and State Constitutions.

"While it seems that everything necessary for the promotion and preservation of the public welfare may be done by the legislature in the exercise of the State's police power, it must be remembered that there are two written constitutions fixing the limits which may not be transcended, viz.: the Federal Constitution and the State constitution."

Am. and Eng. Enc. of Law, 760.

154 "Like other powers of government, there are constitutional limitations to the exercise of police power. The legislature can not, under pretense of exercising this power, enact laws not necessary to the preservation of health and safety of the community that will be oppressive and burdensome upon the citizens. If it should do so, it would be the duty of the court to declare such legislative act void. Toledo, etc., R. Co. *vs.* Jacksonville, 67 Ill., 37; 16 Am. Rep., 611.

"All embracing and penetrating as the police power of the State is, and of necessity must be, it is, nevertheless, subject, like all other legislative powers, to the paramount authority of the State and Federal Constitutions. 1 Dillon Mun. Corp., 142; Cooley's Const. Lim. (6th ed.), ch. 16. See Constitutional Law, vol. 3, pp. 670–760."

18 Am. and Eng. Enc. of Law, p. 760, note.

A particularly well-reasoned case upon the attempted exercise of police power by a legislature or a municipal council is that of The People *vs.* Gillson, 109 N. Y., 389. The legislature of New York had passed an act substantially that no person shall sell, exchange or dispose of any article of food, or attempt to do so, upon any representation or inducement that anything else will be delivered as a gift, premium or reward to the purchaser, than anything other than what is specifically stated to be the subject of the sale or exchange, or is to be delivered or received by the purchaser. A vendor
155 of coffee advertised to give away some crockery. He was arrested, had a trial, and was convicted. There was an attempt to justify the conviction on the ground that the legislature had the right to pass the act in the exercise of its police power. The opinion is by Judge Peckham, now of the United States Supreme Court, and is very exhaustive. After stating what the general rules are with reference to the action of courts in declaring unconstitutional statutes supposed to be enacted by virtue of the police power, he says:

"At the same time it must be remembered that the Constitution is the supreme law of the land, and that when an act of the legislature properly comes before the court to be compared by it with the fundamental law, it is the duty of the court to declare the invalidity of the act if it violate any provisions of that law.

The defendant here appeals for his protection to the clause, among others, in the Constitution which provides that no person shall be deprived of life, liberty or property without due process of law. The meaning of this provision in our State constitution has frequently been the subject of judicial investigation, and this court has had occasion, very recently, to discuss it in quite a number of cases, and a further elaboration is not needed.

"The following propositions are firmly established and recognized:

A person living under our Constitution has the right to adopt
156 and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. The term 'liberty,' as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation. These principles are contained and stated in the above language in various cases, among which are *Live Stock Association vs. Crescent City, etc., Co.*, 1 Abb. (U. S.), 388, 398; *Slaughter House Cases*, 16 Wall., 36, 106; *Matter of Jacobs*, 98 N. Y., 98; *Bertholf vs. O'Reilly*, 74 *id.*, 509; *People vs. Marx*, 99 *id.*, 377.

"It is quite clear that some of these fundamental and valuable rights are invaded, weakened, limited or destroyed by the legislation under consideration. * * * By the provisions of this act a man owning articles of food which he wishes to sell or dispose of, is

limited in his powers of sale or disposition. A liberty to
157 adopt or follow for a livelihood a lawful industrial pursuit, and in a manner not injurious to the community, is certainly infringed upon, limited, perhaps weakened or destroyed, by such legislation. It is certainly lawful to sell (as in this instance) coffee. It is an article of food and is now almost one of the necessities of life to a large number of people. A person engaged as a retailer of coffee might very well think that he could greatly enlarge the amount of his trade by doing precisely what was done by the defendant in this case, and while his profits on the same amount of coffee sold would be smaller than if he gave no present, yet by the growth of his trade his income at the end of the year would be more than by the old method. This statute, if valid, steps in to prevent his adopting such a course to procure trade, and from it to secure an income and livelihood for himself and family. He is thus restrained in the free enjoyment of his faculties, which he ought to have the right and liberty to use in the way of creating or adopting plans for the increase and growth of his trade, business or occupation, unless such restraint is necessary for the common welfare. This law interferes with the free sale of food, for the condition is im-

posed that no one shall sell food and at the same time, and as part of the transaction, give away any other thing. It is not material if by reason of the prohibition the owner's sales of food are greatly cut down and his ability to support his family thereby per-
158 haps largely decreased. If the law is valid, the fact of its existence is a complete answer to the complaints of the owner of food, that his liberty to sell his property, and his chance to make a livelihood, are very greatly impaired.

"It cannot be truthfully maintained that this legislation does not seriously infringe upon the liberty of the owner or dealer in food products to pursue a lawful calling in a proper manner, or that it does not, to some extent at least, deprive a person of his property by curtailing his power of sale, and unless this infringement and deprivation are reasonably necessary for the common welfare, or may be said to fairly tend in that direction or to that result, the legislation is invalid as plainly violative of the constitutional provision under discussion.

"This brings us to the consideration of the question whether the act is valid as a proper exercise of what is, by way of classification, called the police power of the State. That power has never yet been fairly described nor its extent plainly limited further, at least, than this: It is not above the constitution, but it is bounded by its provisions; and if any liberty or franchise is expressly protected by any constitutional provision it cannot be destroyed by any valid exercise by the legislature or the executive of the police power. The extent of this power has been the subject of discussion in this court, and in the recent and most important case of *In re Jacobs*, 98
159 N. Y., 107, the question was examined and most exhaustively reviewed by Earl, J., in his opinion. To reopen the subject now would be useless, and I refer to that case as authority for the statement that the legislature cannot, without reason and arbitrarily, infringe upon the liberty or the property rights of any person within the protection of the constitution of this State; and that if the legislature shall determine what is a proper exercise of its police power, its decision is subject to the scrutiny of the courts. The subject was again reviewed in the *People vs. Marx*, 99 N. Y., 377, in an opinion written by Rapallo, J., and concurred in by the whole court."

It is here made plain that any action by the legislature or a municipality which infringes upon the civil rights or the property rights of any person, will be set aside as unconstitutional and void, unless it is absolutely demanded by the common welfare. If the common welfare of a community demands that there shall be no sale of intoxicating liquors, it applies to sales to men as well as to women.

Again reverting to this opinion, Judge Peckham says:

"Under an exercise of the police power the enactment must have reference to the comfort, the safety or the welfare of society, and it must not be in conflict with the constitution. The law will not allow the rights of property to be invaded under the guise of a
160 police regulation for the protection of health, when it is manifest such is not the object and purpose of the regulation.

See *Austin vs. Murray*, 16 Pick., 121, 126; *Com. vs. Alger*, 7 Cush., 53, 84, cited with approval in *Matter of Jacobs, supra*. As is also said in the last case, it is generally for the legislature to determine what laws and regulations are needed to protect the public health and serve the public comfort and safety, and if its measures are calculated, intended, convenient or appropriate to accomplish such ends, the exercise of its discretion is not the subject of judicial review. But those measures must have some relation to these ends. Courts must be able to see, upon a perusal of the enactment, that there is some fair, just and reasonable connection between it and the ends above mentioned. Unless such relation exist the enactment cannot be upheld as an exercise of the police power."

This opinion considers this question so fully and is so well written that the court is asked to study it carefully.

See also Matter of Application of Jacobs, 98 N. Y., 98, 107; People *vs.* Marx, 99 N. Y., 377.

In the case of The Toledo, etc., R'y Co. *vs.* City of Jacksonville, 67 Ill., 37, the question of the limitation of police power of the State is well considered. In that case an ordinance of the city of Jacksonville required the railway company to keep a flagman by day and a red lantern by night at a point where its track crossed
161 a street. The railway company only had a single track and it did not appear that such crossing was unusually dangerous, or more so than other crossings, and the court held that it was not a reasonable regulation, and, therefore, was prohibited by the constitution or as otherwise put, it was within the constitutional limitation upon the exercise of the police power. It will be noticed that the people are carefully guarded in their constitutional rights. In this case the only invasion of the rights of this corporation was the cost of keeping a watchman by day and a red lantern at night at this crossing, and yet it is the basis of this decision declaring that even that invasion will not be permitted under the guise of exercising the police power of the State. The court says:

"But such regulations must be what they purport to be, police regulations, and must be reasonable when applied to corporations or individuals. What are reasonable regulations, and what are subjects of police powers, must necessarily be judicial questions. The law-making power is the sole judge when the necessity exists, and when, if at all, it will exercise the right to enact such laws.

Like other powers of government, there are constitutional limitations to its exercise. It is not within the power of the General Assembly, under the pretense of exercising the police power of the State, to enact laws not necessary to the preservation of the health and safety of the community that will be oppressive and burdensome upon the citizens. If it should prohibit that which is harm-
162 less in itself, or command that to be done which does not tend to promote the health, safety or welfare of society, it would be an unauthorized exercise of power, and it would be the duty of the courts to declare such legislation void.

"It seems to us that the ordinance in this case imposes an un-

reasonable burden upon the railroad company. There is but a single track, so far as the record discloses, at the point where it requires the services of a flagman, and only the usual trains of the company pass over it. It is totally unlike a place where a number of tracks cross a public street upon which there is a great amount of travel, where trains are made up, and where the trains and locomotives doing the work pass and repass each other at short intervals. The frequency with which trains pass and repass at such places renders the dangers to be apprehended constantly imminent, and the legislature may so declare and make it obligatory on the company to adopt measures to secure the public safety. The rights of the company and the public to the use of the crossing are mutual, but it is the duty of the company to provide the proper safeguards, and the degree of diligence must be in proportion to the hazard. A regulation that would require the company to place a flagman at such a place, or at any place where danger to the public safety, in the judgment of prudent persons, might be apprehended at
163 any time, would be a reasonable one, and could unquestionably be enforced. There can be no necessity, however, for the services of a flagman at a crossing of a public highway in the country, where there is but little travel. There it will be sufficient protection if the company shall be required to erect signs that will notify persons that they are approaching a railroad crossing, and to give the usual signals. It is then the duty of the citizen to exercise a reasonable precaution for the safety of himself and his property."

To the same effect is the case of Lake View *vs.* Rose Hill Cemetery Co., 70 Ill., 192.

In the case of Mugler *vs.* Kansas City, 123 U. S., 623, which is considered to be a leading case upon this subject, it is said:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, *Sinking Fund Cases*, 99 U. S., 718 (25,501), the courts must obey the constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was held in *Marbury vs. Madison*, 5 U. S., 1
164 Cranch., 137, 167 (2:60, 70), 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons upon whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute pur-

porting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution."

The court of appeals of this State quotes from this decision in the case of Platte, etc., Co. *vs.* Lee, 2 Colo. Ct. App., 184, and the case is also quoted from by this court in Platte, etc., Co. *vs.* Dowell, 17 Colo., 376.

What do these authorities mean? They mean that in the exercise of the police power the legislature is controlled by con-
165 stitutional enactments. That means that the constitutional provisions which are referred to control the legislature in its attempted exercise of the police power. In other words, when a constitution guarantees to *every person* the same privileges and immunities any act of the legislature passed with the view of protecting the public morals or the public health must apply to all individuals unless those individuals be under some legal disability. It means that any act of the legislature whereby it discriminates against women is void. It means that if a legislature or municipality desires to regulate the liquor traffic, which it may do under the police power, it must exercise that police power so that it will apply to all of the citizens. In other words, if the legislature or city council desires to do away with wine rooms it must provide that men can not frequent them. It is impossible under these constitutional limitations to say that men may go in wine rooms and that women may not. It is impossible to say that men may go in saloons and buy a drink of liquor and women can not. If, in an exercise of police power, it is proper to not grant any license and to close all saloons, very good; but it is not proper to close saloons to women and leave them open to men. It is not right to say that wine rooms may exist for men and not for women. If a municipal council does not see fit to do away with wine rooms altogether, and on the ground that the association of the two sexes together when drinking liquor is detrimental to the public morals, then the council should pass an ordinance, or the legislature should pass an act, making or providing for separate wine rooms for women and sepa-
rate ones for men, and not say that there may be wine rooms
166 or saloons for men and none for women. It might even go that far in its regulation, but it can not go to the extent of depriving women of the privilege of the wine room and allow it to exist for men.

In the case of United States *vs.* Cruikshank, 92 U. S., 542, the Supreme Court observes that every republican government is in duty bound to protect its citizens in the equality of right. The duty was originally assumed by the States, and it still remains there. The only obligation resting upon the United States Government is to see that the States do not deny the right.

The case of Des Plaines *vs.* Poyer, 123 Ill., 348, decides:

"That public picnics and public dances are not in their nature

nuisances, we think is quite clear. * * * Nor is there anything necessarily harmful in the nature of either, more than that of any other public amusement. When conducted with proper decorum and circumspection, and remote from public thoroughfares, it is impossible to conceive how any public injury or annoyance can result. That the manner of conducting them may be productive of annoyance and injury to the public is not to be questioned, but since the nuisance must exist in this, and can not exist in the mere fact that there is a picnic or dance, the ordinance should be directed only to it.

167 "While the right of the people to be free from disturbance and reasonable apprehension of danger to person and property is to be respected and jealously guarded, the equal right of all to assemble together for health, recreation or amusement in the open air is no less to be respected and jealously guarded. Because a privilege may be abused, is no reason why it shall be denied."

There can be no case found where the exercise of the police power for the protection of the public morals has ever been exercised in a discriminating way against a woman simply because she was a woman. The police power may be invoked to regulate the liquor traffic. It may be invoked as a basis of legislative enactment as to the hours and place where liquor may be sold. If it is invoked to regulate wine rooms it must be invoked not against the class known as females, but it must be invoked against both sexes, and if it is invoked against both male and female, it may be invoked to prohibit the wine room entirely, or it may be invoked to provide separate wine rooms for women and men, if they are going to have wine rooms at all, and it appears that the association of the sexes is bad. Then there is no discrimination against women and in favor of men. This would be in accordance with decisions in certain States where the statute requires separate accommodations in coaches and carriages for the white and colored races.

Louisville, etc., R. R. Co. *vs.* State, 66 Miss., 662. Affirmed in 133 U. S., 587.

168 In Missouri separate free schools are provided for the white and colored children.

15 S. W., 765.
93 N. Y., 438.
Dawson *vs.* Lee, 83 Kentucky, 49.
Roberts *vs.* Boston, 5 Cush. (Mass.), 198.

Neither the legislature of the State nor the council of the city has authority to violate the constitutional guaranties under the guise of measures claimed to be for the protection of the public morals, the public health or the public safety.

The sale of intoxicating liquors is not an unlawful business. There is no constitutional provision prohibiting the sale of liquor to either men or women. Unless there is a constitutional prohibition a woman has as much right under the constitution- of the United

States and of the State of Colorado and laws of the State of Colorado to enter a saloon and purchase a drink of whiskey as a man. If she has the right to purchase the same as a man the saloon keeper has a right to sell to her the same as to a man, and any ordinance which prevents him from selling to a woman when he may sell to a man is an invasion of his civil rights and his property rights, because the right to sell to a woman or to a man is a property right. Has a woman, therefore, the right to enter a saloon or place adjacent thereto where men are furnished with drinks, and there be supplied with liquors? The Constitution of the United States, 1 Mills, page 50, provides:

"No State shall make or enforce any law which shall abridge
169 the privileges or immunities of citizens of the United States;
nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This section was not enacted for the benefit of men only, but for the benefit of all citizens. A woman is a citizen in the same sense that a man is a citizen. Her privileges and immunities as a citizen of the United States can not be abridged by the State of Colorado or a municipality therein. She has the equal protection of the laws, and the State of Colorado can not discriminate against her in its legislation in favor of men.

The constitution of the State of Colorado, 1 Mills, page of 145, provides:

SECTION 276. "That, all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness."

The word "person" is used, not male or female. It includes both. The male and the female have equal rights of enjoying their liberties and of seeking and obtaining their safety and happiness. Under this provision a female has as much right to seek her enjoyment and happiness in the taking of a glass of beer or whiskey as
the male, and any act by the municipality of the city of
170 Denver preventing her from so enjoying those rights is a
violation of this constitutional provision. It is equally a violation of said United States constitutional provision and of the State of Colorado to prohibit a saloon keeper from selling to a woman.

Section 298 of the constitution of the State of Colorado, 1 Mills, page 199, provides:

"That no person shall be deprived of life, liberty or property, without due process of law."

To prevent a saloon keeper from selling to a woman if she has the right to purchase, and then, under an ordinance, fine him for so doing, takes his property without due process of law.

Women's rights in Colorado have been the subject of favorable legislation for years. There has been a tendency to relieve her of

all disability. She has been given the franchise. See 1 Mills, sec. 404, page 281; 3 Mills, page 446.

In the brief in case No. 4389, pages 11, 12 and 13, we appear to say that this franchise provision of the constitution is violated. We make no such contention. That is cited only to show the policy of the law of this State toward women. This is further made apparent by sec. 423 of Mills, page 575, which is as follows:

"That all citizens of this State, regardless of race, color or previous condition of servitude, shall be entitled to full and equal
171 enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, churches, barber shops, public conveyances, theaters, and other places of public resort or amusement."

The ordinance in question, we contend, is contrary to this statutory enactment.

The provision of the United States Constitution that no State shall pass a law which shall deny the equal protection of the laws to every citizen applies with peculiar force to the provisions here, because, if the State can not pass such a law, a municipality can not. This matter is well considered in the case of *In re* Mary McGuire, 57 California, 604. In that case an ordinance of the city of San Francisco was claimed to be in conflict with the constitution of the State of California, which constitutional provision was that:

"No person shall on account of sex be disqualified from entering upon or pursuing any lawful business, vocation, or profession."

That constitutional provision is no broader than those above quoted. It was there held that the ordinance prohibiting a woman from serving drinks in a bar room was in direct violation of said constitutional provision. It was contended in that case that the inhibition or disqualification was not on account of sex, but on account of its immorality; that such employment of a woman is of a vicious tendency and hurtful to sound public morality; that such business is not *malum in se*, but of a hurtful and immoral tend-
172 ency, and on account of this immoral tendency it was claimed that the exercise of the authority given by that ordinance was nothing more or less than the exercise of the police power which is vested in the city, and the court said:

"This power to make police regulations is as much restrained by the section just referred to as is the legislative power vested in the senate and assembly. Both grants of power are alike made by the constitution, and both are alike restricted by this section of the article. It may be further said of it that it is prohibitory in its character, and needs no legislative to make it active in its effect. It is self-executing, and struck with nullity all acts in existence inconsistent with it as soon as the constitution went into operation, and all since passed."

With reference to the question of the immorality of allowing women to drink in saloons or wine rooms the court said:

"We will add here that the law-making power of the State is ample to make laws affecting both sexes alike, and not inhibited by

the constitution, which will accomplish the object so much desired—to prevent practices hurtful to public morality. The constitution was not framed with a disregard of the important considerations urged upon us in this regard. It merely directs that a law which is framed to accomplish this object by affecting or
173 operating upon lawful callings, shall affect both sexes alike. We are not at liberty to say that such important matters were overlooked in framing our organic law.

"The ordinance and the law both being unconstitutional, there is no offense, and there can be no valid conviction and sentence; hence no jurisdiction for any purpose."

This decision is conclusive of the proposition that a woman has the same rights as a man. The whole policy of the law of this State has been to enlarge the rights of women and give them the same privileges and immunities which the male possesses.

If a woman has a right to go into a saloon and get a drink, the same as a man, the saloon keeper has a right to sell her that drink, and any municipal ordinance which deprives him of that right is an invasion of his civil rights and of his property rights to conduct a lawful business, because it would be lawful to sell the liquor to the woman, and to deprive him of that right, and thereby destroy his business, is a taking of property without due process of law and an ordinance which subjects him to fine and imprisonment is unconstitutional and void.

There is no question involved in this case as to the effect upon the public morals of employing women in saloons and the serving of liquors by them. Nothing of that kind is charged in this case, nor is there any question raised in this case as to the sale of liquors within the hours prohibited by the ordinances or on Sunday. The charge is for selling liquor to women during the hours which,
174 by the ordinance, the defendant was allowed to sell to men. None of the pernicious consequences which are supposed to follow from the employment of women in saloons necessarily follow from the sale under the circumstances charged in this case, and the reasons which should authorize the portion of the ordinances which prohibits the employment of women do not support the conclusion of the court below that the portion of the ordinances here involved is a valid exercise of the police power and justified on the ground of public morality. The sale of liquor being permitted in this State, the business of selling, except so far as restrictions are placed upon it by law, is upon the same plane as any other business, and the parties engaged in it have the same rights as if they were engaged in some other business.

The right of a person to engage in any business permitted by law is a substantial right guaranteed to him by the Constitution of the United States. In Yick Wo *vs.* Hopkins, 118 U. S. 356, the petitioner, Yick Wo, had been convicted of violating an ordinance of the city of San Francisco, which made it unlawful for any person to carry on a laundry within the city limits without having first obtained the consent of the board of supervisors, except that the same be

located in a building constructed of either brick or stone. Yick Wo, having been convicted, brought *habeas corpus* proceedings in the circuit court of the United States, alleging that the ordinance was unconstitutional. The circuit judge refused to discharge him in deference to the supreme court of California upon the question, and the case was taken to the Supreme Court of the United States. It appeared that the ordinance, as enforced, had the effect of prohibiting Chinamen from carrying on a laundry business, inasmuch
175 as their laundries were all carried on in wooden buildings, and the board of supervisors uniformly refused to give them permission without regard to the condition of their premises. The Supreme Court held that the ordinance in question was contrary to the Constitution of the United States and invalid. In the opinion it is said:

"The ordinance drawn in question in the present case is of a very different character. It does not prescribe a rule and conditions for the regulation and use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone, but, as to wooden buildings, constituting nearly all those in previous use, it divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure. And both classes are alike only in this, that they are tenants at will, under the supervisors, of their means of living. The ordinance, therefore, also differs from the not unusual case, where discretion is lodged by law in public officers or bodies to grant or withhold licenses
176 to keep taverns, or places for the sale of spirituous liquors, and the like, when one of the conditions is that the applicant shall be a fit person for the exercise of the privilege, because in such cases the fact of fitness is submitted to the judgment of the officer, and calls for the exercise of a discretion of a judicial nature."

This decision establishes the principle that an ordinance which discriminates against a particular race or class of persons, or which can be so enforced as to discriminate against a particular race or class, is invalid. For the same reason an ordinance which discriminates against a person on account of sex, without good reason, is invalid.

This court recently decided, *In re* Morgan, 26 Colo., 415, that a statute which limited the right of certain classes of persons to work more than eight hours per day was invalid, because infringing the right of persons to contract in regard to their labor.

A statute of Illinois, which prohibited the employment of females in manufacturing establishments for more than eight hours per day, was held invalid by the supreme court of that State.

Ritchie *vs.* People, 55 Ill., 98.

In the opinion it is said:

"It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is
177 sought to sustain the act as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique. It will not be denied that woman is entitled to the same rights, under the Constitution, to make contracts with reference to her labor as are secured thereby to men. The first section of the fourteenth amendment to the Constitution of the United States provides: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive *any person* of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' It has been held that a woman is both a 'citizen' and a 'person' within the meaning of this section. (*Minor vs. Happersett*, 21 Wall., 162.) The privileges and immunities here referred to are, in general, 'protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may prescribe for the general good of the whole.' (*Slaughter House Cases*, 16 Wall., 36.) As a citizen, woman has the right to acquire and possess property of every kind. As a 'person,' she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty or property without
178 due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the natural right to gain a livelihood by intelligence, honesty and industry in the arts, the sciences, the professions or other vocations. Before the law, her right to a choice of vocations can not be said to be denied or abridged on account of sex. (*In re Leach*, 134 Ind., 665.)

"The tendency of legislation in this State has been to recognize the rights of woman in the particulars here specified. The act of 1867, as above quoted, by the use of the words 'he or she,' plainly declares that no woman shall be prevented by anything therein contained from working as many hours overtime or extra hours as she may agree; and thereby recognizes her right to contract for more than eight hours of work in one day. An act, approved March 22, 1872, entitled 'An act to secure freedom in the selection of an occupation,' etc., provides that 'no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex.' (1 Starr & Cur. Stat., page 1056.) The married woman's act of 1874 authorizes a married woman to sue and be sued without joining her husband, and provides that contracts may be made and liabilities incurred by her and enforced against her to the same extent and in the same manner as if
179 she were unmarried, and that she may receive, use and possess her own earnings, and sue for the same in her own name,

free from the interference of her husband, or his creditors. (Rev. Stat., Ill., chapter 68, sections 1, 6 and 7.)

"Section 5 of the act of 1893 is broad enough to include married women and adult single women, as well as minors. As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But inasmuch as sex is no bar, under the constitution and the law, to the endowment of woman with the fundamental and inalienable rights of liberty and property, which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the State for the purpose of limiting her exercise of those rights, unless the courts are able to see that there is some fair, just and reasonable connection between such limitation and the public health, safety and welfare proposed to be secured by it."

The right of the saloon keeper to sell liquor is a property right just as much as the right of the manufacturer to employ labor, and the right of a woman to contract for the purchase of liquor is as much a right given her by the constitution and statutes of this State as the right to contract for her labor.

180 We further contend that an ordinance, to be valid as an exercise of police power, must be a reasonable regulation. Such is the rule.

City of Chicago *vs.* Netcher, 183 Ill., 104.
May *vs.* People, 1 Colo. Ct. App., 157.

"Municipal ordinances are passed by a body representing the whole community and for the purpose of regulating matters which affect the general welfare, and their provisions should, as far as practicable, affect each member of the community alike.

"Ordinances should neither favor nor discriminate against any person or class of persons, or any particular portion of the municipal territory. Their burdens and their benefits should rest equally upon all. The law of a municipality, like the laws of a State, should be uniform and of a general operation within the corporate limits, and any unnecessary, distinct discrimination between persons, classes, or locations, will invalidate them."

May *vs.* People, 1 Colo. App., 161.
Town of Lake View *vs.* Letz *et al.*, 54 Ill., 82.

"The general policy of our law is that all persons, irrespective of sex, age or condition, shall have the same privileges."

Butchers' Union *vs.* Crescent City, 111 U. S., 757.

181 If a woman has a right to purchase liquor she has a right to go where the liquor is sold and the same right to purchase and drink it that a man has. It is within the province of the legislature or city council to regulate the business of liquor selling and to prohibit sales altogether to such an extent as may be necessary in the opinion of the lawmaking body to subserve the best interests of

the State or municipality, but all such regulations must operate equally upon all persons under like conditions. If wine rooms are a detriment to society they should be abolished altogether and their use not confined to a particular portion of society, or statutes or ordinances might be enacted or adopted providing safeguards against the dangers which are supposed to result from the carrying on of wine rooms in connection with saloons, which regulations would operate equally upon all persons frequenting said rooms without regard to sex. But this ordinance does not come within the powers of the legislature or city council in that regard, because it operates unequally and does not purport to regulate the sale of liquor in wine rooms or the method of carrying on wine rooms, but entirely prohibits the presence of certains persons in wine rooms and saloons on the ground of sex alone, upon which, in the light of the foregoing authority, such a discrimination is contrary to the constitutional provisions.

In order that an ordinance that discriminates against a woman in this regard may be upheld it must appear that there is some fair, just and reasonable connection between such limitations and the public health, safety and welfare proposed to be secured by it.

Nor does the right of the city council to pass ordinances regulating the liquor traffic give it any right to arbitrarily dis-
182 criminate against particular persons in the conduct of that business.

In the case of City of Chicago *vs.* Netcher, 183 Ill., 104, 55 N. E., 707, an ordinance which prohibited the sale of intoxicating, malt or fermented liquors in any place of business in the city of Chicago wherein dry goods, clothing, jewelry or hardware were kept for sale, was held invalid. In the opinion, speaking of the business of liquor selling, it is said:

"Police regulation of that business has always been sustained, as having for its object the prevention of intemperance, pauperism, and crime, and diminishing, as far as practicable, the injurious consequences to the public resulting from the business. In Schwuchow *vs.* City of Chicago, 68 Ill., 444, it was said: 'This business is, on principle, within the police power of the State, and regulations which may rightfully be imposed upon it might be obnoxious as an illegal restraint of trade when applied to other pursuits.' It is clearly within the police power to prohibit all sales of liquor on the ground that 'dram drinking is an evil to the person, and pernicious to the welfare of the public.' Dennehy *vs.* City of Chicago, 120 Ill., 627, 12 N. E., 227. The city may also form prohibition districts for the protection of particular neighborhoods from the influence of dram shops, wherever it is desirable or reasonable that there should be such prohibition, although the sale may be licensed in other
183 parts of the city. People *vs.* Cregier, 138 Ill., 401, 28 N. E., 812. This ordinance, however, is not an exercise of the police power for the protection of the public from the injurious effects of the liquor business. It is not aimed at the suppression of the business, either in certain localities or upon any ground of police

regulation, but is directed solely against the sale by certain persons in their places of business; that is, by those who also sell dry goods, clothing, jewelry or hardware. The city of Chicago has not seen fit to prohibit the sale of liquor, either generally or in the district of the city where defendant's store is kept. It has established its policy with reference to that business, and defendant has complied with its ordinances, so as to be entitled to sell liquor in his store, unless this ordinance constitutes a valid prohibition against his doing so. It is apparent that, if there is any evil in permitting a sealed bottle of liquor to be sold from a store where dry goods, clothing, jewelry, or hardware are sold, the same evils would result from the sale from any other kind of store. The ordinance permits the dealer in all kinds of merchandise, except dry goods, clothing, jewelry, and hardware, to sell liquor from his store, and the city cannot arbitrarily discriminate against the defendant without any basis or ground for the discrimination. Special privileges are not to be granted to favored persons in the liquor business any more than in any other business. Zanone
184 *vs.* Mound City, 103 Ill., 552. There are other clerks employed in the other departments of defendant's store, separate and independent from this, but there was no liquor drunk on the premises, and none sold there for that purpose; so that the ordinance could not have been intended to prevent making a drinking place where clerks are employed in other lines of business. The restriction is purely arbitrary, not having any connection with, and not tending in any way towards the protection of the public against the evils arising from the sale of intoxicating liquor."

This decision shows that there is no different rule to be applied to ordinances concerning the liquor business, when the business is not prohibited by law, and other lines of business. An ordinance, therefore, which unjustly discriminates, as the ordinance in question does, as to the person to whom sales may be made, is invalid.

We have cited, and the appellants have cited, the case of *In re* Mary McGuire, 57 Cal., 604; the appellants have also cited the case of *Ex parte* Hayes, 33 Pac., 337; *Ex parte* Christian, 88 Cal 208, and Foster *vs.* Board of Police Commissioners of the City of San Francisco, 37 Pac., 763. The point particularly decided in the McGuire case is that women had the right to be employed in saloons to serve drinks the same as men. The later cases just mentioned take the contrary view. We desire to call the court's attention to the difference between the employment of a woman to serve drinks
185 and the serving to a woman of drinks by a saloon keeper. The late California cases just above mentioned refer only to the employment of women to serve drinks and base their decisions upon the ground that in the exercise of the police power a municipality may regulate the liquor traffic, and that includes the power to say who shall and who shall not deal out drinks in a saloon or wine room. The distinction to be drawn between the cases cited and the case at bar is that the question here presented is not a question of the regulation of the liquor traffic. It is an attempt on the

part of the municipal authorities to discriminate as to the class of persons or individuals who may purchase liquor, and is an infringement upon the rights of that class and the individuals composing it, and not a regulation of the liquor traffic. In other words, the question of whether a woman has the right to buy a drink, and as to whether a saloon keeper has a right to sell it to her, are questions which are covered by the constitutions of the United States and State of Colorado, guaranteeing to both the rights claimed for them, whereas the question of who should and who should not serve drinks in a saloon does not involve a right which is guaranteed by the constitution. And again, the discrimination, or attempted discrimination, against a woman to purchase a drink and the saloon keep-r selling it to her, does not involve the regulation of the liquor traffic. It is based upon the fact that she is a female and not a male, which is saying that under the guise of the police power they can discriminate against the female sex. That raises the question of morality and immorality only, and separates it entirely from the question of regulating the liquor traffic. If a person, by reason of the fact that
186 she is a female, can be prevented from purchasing a drink at a saloon or wine room on that account, then under the guise of the police power you may say that she cannot purchase a corset at a dry goods store; but the appellants will say that the association in these places of both men and women is injurious. If that be true it is not injurious simply because the one is a woman; it is injurious because of the fact that one is a woman and one is a man. You cannot discriminate against a woman and in favor of a man. If you do not want them to get together in a saloon or wine room, prohibit the saloons and wine rooms entirely, or provide separate wine rooms for the men and separate wine rooms for the women.

We believe we have clearly shown that the sections of the ordinance in question are illegal and void, that the action of the fire and police board was without warrant or authority in law; that it invaded the civil rights of Cronin; that it resulted in the destruction of his property and business, and that the injunction was a proper and the only remedy which could have been granted and give full relief to the plaintiff below.

For these reasons the judgment of the district court should be affirmed.

Respectfully submitted,

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187 Nos. 4389 and 4392.

In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} Error to the County Court of Arapahoe County.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.
} Appeal from the District Court of Arapahoe County.

Brief for Plaintiff in Error and Appellee on Motion for Rehearing.

Milton Smith, attorney for plaintiff in error and appellee.

188 In the Supreme Court of the State of Colorado.

DANIEL CRONIN, Plaintiff in Error,
vs.
CITY OF DENVER, Defendant in Error.
} No. 4389. Error to the County Court of Arapahoe County.

FRANK ADAMS, JOHN T. BOTTOM, and William H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee.
} No. 4392. Appeal from the District Court of Arapahoe County.

Brief for Plaintiff in Error and Appellee on Motion for Rehearing.

The plaintiff in error in the first entitled cause and appellee in the second has filed his motion for a rehearing of these cases,
189 and this brief and argument is filed in support of such motion for the purpose of calling the court's attention more particularly to the points which it is claimed on behalf of plaintiff in error and appellee are erroneously decided.

The court, by the opinion in these cases, holds that the sections of the ordinance in question prohibiting any person owning or having charge of a saloon, etc., from permitting any female person to be or remain upon the premises for the purpose of being supplied

with any liquor is valid, because, as it is said, the legislature has the right to make any restrictions or conditions which it deems proper in regard to the carrying on of the saloon business, or the selling of liquors. This, as a general principle, may be established by the authorities cited in the opinion of the court, and if the application of it to these cases restricted a saloon keeper solely in the conduct of his business, it would have an important bearing upon the decision of these cases, but the primary principle involved in these cases is not the question of regulating the liquor traffic. It is claimed on behalf of the plaintiff in error and appellee that the sections of the ordinance in question unjustly discriminate against women as a class, and that such unjust discrimination works a hardship to the plaintiff in error and appellee and damages his business. This court, in its opinion, says:

"If a discrimination is made against women solely on account of their sex, it would not be good."

But the discrimination made by these sections of the ordi-
190 nance is against every female, and, so far as anything appears in the ordinance itself, it is a discrimination solely on account of sex. This court assumes that the discrimination may be justified upon the ground of public morality, but in order that the question of public morality be raised other conditions must exist otherwise than the presence of women in a place where liquors are sold. The ordinance is general in its terms and prohibits women from being in any place where liquors are sold. It would apply in all respects to a place owned and conducted by women and frequented by women exclusively. If a women's club concluded to dispense liquors to its members, as clubs sometimes do, every member of such a club could be convicted of violating this ordinance, but in such a case the question of public morality, upon which this court relies, could not exist. The question as to whether a woman should or should not drink liquor may be a question of morality in the abstract, but it is not a question of public morality which will justify legislation by ordinance prohibiting such use of liquor by women under all circumstances, and if the presence of women in places where liquor is sold is to be prohibited on the ground of public morality there must exist some other reason than the fact that the liquor is supplied to a woman before public morality is affected and an ordinance forbidding such sale can be upheld. The court, in its opinion, says:

"No penalty moreover is visited upon females for a violation of the provisions. The only penalty imposed is upon the saloonkeeper when he permits them to enter, or remain in the prohibited places for the prohibited purposes."

191 The last clause of section 746 reads as follows:

"Nor shall any female person be or remain in any dram shop, tippling-house, liquor saloon or place adjacent thereto, or connected therewith, and wait or attend on any person, or solicit drinks in any such place."

Section 751 provides a penalty for any person who violates any of

the provisions of article XV, including the sections in question in these cases.

The complaint in the case against the fire and police board alleges:

"That the said fire and police board have instructed the said chief of police and police officers acting under his authority, to keep watch of plaintiff's said premises and in case any woman enters plaintiff's said premises so occupied by him as a place for the sale of liquors to arrest this plaintiff, and any and all such women found or being there, and said fire and police board and said chief of police threaten and state that they will arrest this plaintiff as often as any woman is found in or upon said premises, and will cause him to be fined a like or greater amount for each of said offenses, and threaten to station police officers at the entrance of plaintiff's said premises and to arrest said plaintiff whenever any woman enters said premises, and that said conduct of said police officers acting under
192 the instructions of said fire and police board and said chief of police, has, in a large measure, destroyed plaintiff's business by deterring both men and women from entering said place on account of said officers being present at or near said place, and if persisted in will absolutely destroy and render valueless the said business and property of the said plaintiff."

The injunction issued in this case enjoined and restrained "the defendants from arresting the plaintiff or causing the plaintiff to be arrested charged with any violation of sections 745 and 746 of the ordinance No. 101 of the series of 1898, and from arresting any woman or women that may be in or upon said plaintiff's said premises upon charge of a violation of either of said sections, and from interfering with said plaintiff's said business upon any charge made in connection with said sections 745 and 746, until the further order of this court."

This case was decided in the court below upon a demurrer to the complaint. No facts, except those stated in the complaint, were presented for the court's consideration. From the complaint it appears that the police officers construed this section of the ordinance to prohibit women from being present in a place where liquor is sold and that the ordinance imposed a penalty upon females visiting the place, as well as upon the proprietor. It appeared
193 that the police officers threatened to arrest all women found upon the premises, and that such conduct of the police department had the effect of deterring both men and women from visiting the place, and thus materially interfered with the plaintiff's business. By the construction put upon this section of the ordinance by this court it is plain that the police authorities had no right to arrest any woman for a violation of this section of the ordinance and that the threatened action of the police authorities was entirely unjustifiable, was an unwarranted interference with plaintiff's business affairs, and, under the allegations of the complaint, such interference injured the plaintiff and the injunction was properly issued to restrain such unwarranted interference with plaintiff's business.

This court does not decide that plaintiff was not entitled to an injunction to restrain such interference with his business, but does decide that the ordinance does not impose any penalty upon females violating its provisions, and, therefore, decides that the police department had no authority to make such arrests or interfere with plaintiff's business to that extent. This being so, the judgment of this court should sustain the injunction in so far as it enforces the rights which this court decides the plaintiff did possess and the judgment of the court that the complaint should be dismissed is erroneous.

The district court case was decided upon a demurrer to the complaint and the county court case upon an agreed statement of facts. In neither case was there any evidence before the court that the enforcement of the ordinance against the presence of women in plaintiff in error and appellee's place of business was for any
194 other reason than that the ordinance in their opinion prohibited women from being present in such places. The enforcement of the ordinance was a discrimination based upon sex alone, so far as anything before the court in either case showed. The police officials did not justify the arrest of the plaintiff and the women being present in his place of business for any other reason than that the presence of women in such place of business was contrary to the ordinance. No injury to public morality was alleged or shown, and the lower courts would have had no justification for finding any such injury to public morality from the allegations of the complaint in the one case or the agreed statement of facts in the other, and the conclusion of this court that such an injury to public morality existed is therefore outside of the showing made by the records in these cases.

In the opinion of this court *In re* Morgan, 26 Colo., 415, the fact that the eight hour law did not contain anything showing that it was enacted for the benefit of the public health was held an important circumstance tending to show that the law was not justified under the general police power of the State. In the opinion, on page 421, it is said:

"The protection of the public health is mentioned neither in the body of the act, nor in its title, as is usually the case in similar acts of other States. When it is clearly perceived from the terms of an act that the thing prohibited necessarily affects the public health, it may not be necessary expressly to declare therein what the object of the act is; but where the result is doubtful, the object of
195 the act ought, somewhere and somehow, to be stated, and, in accordance with some decisions, must be thus proclaimed, else the act will be held invalid on the ground that it is deceptive in not expressing its real object."

There is no mention either in the charter or the ordinance that these sections are designed to promote public morality. They appear to be, as this court finds them to be, exclusively regulations of the liquor traffic, and, under the reasoning of this court in the Mor-

gan case, *supra*, this portion of the ordinance can not be justified on the ground of public morality.

We respectfully submit that the question to be decided by this court is the right of a woman to purchase liquor at places where it is sold independent of any question of public morality, or of the regulation of the liquor traffic. If public morality is likely to be injured it is the duty of the legislature or city council to provide proper laws and ordinances which will operate without discrimination against women on account of sex alone to prevent such injury; and if, as this court says, the discrimination against women solely on ac-ount of their sex is not good, then such discrimination can not be justified on the ground that it is a regulation of the liquor traffic or on the ground that it is a regulation concerning public morality. Public morality can be upheld by appropriate ordinances which do not discriminate against any class, and likewise the liquor traffic can be regulated by legislation of the same kind. To say that under the guise of regulating the liquor traffic the legislature or city council can discriminate against women is equivalent to saying that any discrimination can be
196 made and enforced against the proprietors of places where liquor is sold, notwithstanding how they may affect the community generally, and as well the person engaged in the business. If the city council can prohibit a saloon keeper from selling liquor to women it could equally prohibit the sale to any other class distinguished by any arbitrary criterion which it might think proper. It might prohibit the sale to men whose names began with certain letters of the alphabet, or who wore certain kinds of clothing or lived in certain places, or for any other reason, no matter how absurd or inapplicable, as a regulation of the liquor traffic.

The principle which this court enunciates is that any regulation of the liquor traffic is proper, but we respectfully submit that any principle which would lead to such absurd conclusions is not law, that a rehearing should be allowed in these cases and an opinion rendered not subject to these objections.

Respectfully submitted.

MILTON SMITH,
Attorney for Plaintiff in Error and Appellee.

197 In the Supreme Court of the State of Colorado.

FRANK ADAMS, JOHN T. BOTTOM, and WILLIAM H. Griffith, Constituting the Fire and Police Board of the City of Denver, and Hamilton Armstrong, Chief of Police of the City of Denver, Appellants,
vs.
DANIEL CRONIN, Appellee. } No. 4392.

DANIEL CRONIN, Plaintiff in Error,
vs.
THE CITY OF DENVER, Defendant in Error. } No. 4389.

Brief.

The printed briefs in these cases cover considerable ground, but at this time I wish to call the court's attention to the principles of law which are involved in these cases and to a few additional authorities bearing upon their determination.

In the case first entitled the question of the power of the court to enjoin the action of the defendants is raised and must be determined before the case can be determined upon its merits. This court has already decided this question. In the case of The Denver Tramway Company *vs.* Londoner, 20 Colo., 150, an injunction was issued restraining the mayor and chief of police of the city
198 of Denver from interfering with plaintiff's employés engaged in building street railway tracks. It was claimed that the plaintiff company had no authority to occupy the streets of the city for such purpose and that the ordinance under which it asserted such authority was void. This court, however, decided the case in favor of the plaintiff.

If an injunction was a proper remedy against the police officers of the city in that case, it is a proper remedy in this case. In that case the employés when arrested could have defended the prosecutions against them as it is claimed the plaintiff in this case could do, but for the reasons stated in the printed briefs such remedy is not adequate and sufficient.

By the second entitled case but one question is presented; that is, the validity of the ordinance under which the prosecution was instituted and this question is also presented by the pleadings in the other case. To decide this it is necessary to pass upon two questions; first, are the sections of the ordinance in question valid under the constitution of the State of Colorado; and second, are they valid under the Constitution of the United States.

I.

Section 3 of article 2 of the State constitution provides:

"That, all persons have certain natural, essential, and inalienable

rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property, and, of seeking and obtaining their safety and happiness."

This court *In re* Morgan, 26 Colo., 415, decided that that provision of the constitution is violated by a statute which unjustly and arbitrarily singles out a class of persons and imposes upon them restrictions from which other similarly situated are exempt, and that such a statute is also invalid as class legislation. It is held
199 that the regulation of any business must be confined to its public side and that protection of the health of individuals engaged in certain occupations does not justify a statute regulating the number of hours persons engaged in such occupations may work. In the opinion of the court several illustrations are given of the extent to which the principle which would uphold such a statute could be carried.

"Then it is only one step further to provide by law the style and quality of garments the citizen may wear, the quantity and quality of food he may eat, and the *beverage he may drink*."

In re Morgan, *supra*, page 430.

The ordinance now before the court is an attempt to control the acts of a large class of citizens, viz., all the women of the State, as to the beverage they may drink. This ordinance does not alone prohibit women frequenting saloons and other places where liquors are sold and drinking liquor there, but prohibits them from being in a saloon for the purpose of buying liquor to be drank elsewhere, and inasmuch as such articles can be purchased only at saloons or other places licensed to deal in them, it, to a great extent, prohibits women from procuring and using these articles for beverage or any other purpose.

This question was directly passed upon by the Kentucky court of appeals in the case of Gastinean *vs.* Commonwealth, 49 L. R. A., 111. That case holds that a municipal ordinance making it a misdemeanor for a woman to go into any building where liquor is sold or stand within fifty feet of such building is void as an unnecessary interference with individual liberty.

If the portion of the ordinance which prohibits women from going into and being in saloons is void, then an ordinance which inflicts a penalty upon the saloonkeeper for allowing a woman to be
200 present in the saloon is equally void because the enforcement of such a provision would deprive the woman of her right to go into the saloon for any purpose just as much as if the ordinance was enforced against her directly, as, if the saloonkeeper is to be punished for her presence there, he will not allow her to be present.

II.

The 14th amendment to the Constitution of the United States, among other things, provides:

"No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This provision of the Constitution is invoked in the pleadings and briefs filed in both of these cases. The decision of this court, if in favor of the validity of these sections of the ordinance in question, will be subject to review by the Supreme Court of the United States. That court has decided a large number of cases involving the validity of statutes, which, it was claimed, violated these provisions of the Constitution. The principle established by those decisions is that a State legislature or municipal council may enact laws or ordinances regulating the conduct of the citizen, provided such statutes or ordinances operate upon all citizens equally and are in regard to subjects within the police power of the State. The question presented in these cases is, whether the police power of the State justifies the sections of the ordinance in question. The plaintiff in error and appellee in these cases contends that the restrictions of these ordinances are invalid because they do not operate equally upon all persons and that they tend to deprive certain persons of the right to do business and acquire property. The defendants in error
201 and appellants contend that these provisions of the ordinance are justified by the police power of the State and that the State has the right, in the exercise of its police power, to classify persons and determine that one class of persons may have certain privileges and another may not.

The decision in the case of Gulf, Colorado and Santa Fe Railway Co. *vs.* Ellis, 165 U. S., 150, clearly states the principle of such a classification. After stating that as a general proposition it is true that it is not within the scope of the fourteenth amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection, the opinion proceeds as follows:

"It is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

As well said by Black, J., in *State vs. Loomis*, 115 Missouri, 307, 314, in which a statute making it a misdemeanor for any corporation engaged in manufacturing or mining to issue in payment of the wages of its employés any order, check, etc., payable otherwise than in lawful money of the United States, unless negotiable and redeemable at its face value in cash or in goods and supplies at the option of the holder at the store or other place of business of the

corporation, was held class legislation and void: 'Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair. Such a classification for such a purpose would be arbitrary and a piece of legislation despotism, and therefore not the law of the land.'

In *Vanzant v. Waddel*, 2 Yerger, 260, 270, Catron, J., (afterwards Mr. Justice Catron of this court,) speaking for the supreme
202 court of Tennessee, declared: 'Every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another.'

In *Dibrell v. Morris Heirs*, supreme court of Tennessee, 15 S. W. Rep. 87, 95, special judge, Baxter, reviewing at some length cases of classification, closes the review with these words: 'We conclude, upon a review of the cases referred to above, that, whether a statute be public or private, general or special, in form, if it attempts to create distinctions and classifications between the citizens of this State, the basis of such classification must be natural and not arbitrary.'

In *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. 232, the question was presented as to the power of the State to classify for purposes of taxation, and while it was conceded that a large discretion in these respects was vested in the various legislatures, the fact of a limit to such discretion was recognized, the court, by Mr. Justice Bradley, saying, on page 237: 'All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature or the people of the State in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition.'"

Under the principle stated in the foregoing cases, the classification of the ordinance which allows all men to go into saloons and prohibits all women from being present there, is invalid.

The question of morality, which counsel for appellants and defendant- in error claims justifies the ordinance, is not involved in these cases because it nowhere appears that the ordinance is based upon any such question and this court cannot assume that the question of morals had anything to do with the passage of the ordinance. Both cases were decided practically upon the pleadings. No testi-

mony was offered as to the effect of the presence of women in saloons, and there is nothing in the record upon which to base a claim that the evil effects follow from the mere presence of women in saloons, and as stated in the printed briefs, if such evil effects do result, they can be restrained or done away with by legislation which will act equally and uniformly upon all classes of persons.

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Respectfully submitted,

MILTON SMITH,
Attorney for Appellee and Plaintiff in Error.

4/7/2/5

Endorsed on cover: File No. 18,624. Colorado supreme court. Term No. 100. Daniel Cronin, plaintiff in error, *vs.* Frank Adams, John T. Bottom, and William H. Griffith, constituting the fire & police board of the city of Denver, and Hamilton Armstrong, chief of police of the city of Denver. Filed July 26, 1902.